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INSTITUTES OF CONSECRATED LIFE

SECTION II
SOCIETIES OF APOSTOLIC LIFE

SPC	PIUS XII, Apostolic Constitution *Sponsa Christi*, November 21, 1950, *AAS* 43 (1951) 5–24
SPCU	Secretariat for Promoting Christian Unity
SRR	Sacred Roman Rota
SRR Dec	*Sacrae Romanae Rotae Decisiones seu sententiae*, 1–40 (1908–1948) TRIBUNAL APOSTOLICUM SACRAE ROMANE ROTAE, *Decisiones seu sententiae selectae*, 41–66 (1949–1974) TRIBUNAL APOSTOLICUM ROTAE ROMANAE, *Decisiones seu sententiae selectae*, 67–72 (1975–1980) APOSTOLICUM ROTAE ROMANAE TRIBUNAL, *Decisiones seu sententiae selectae*, 73 (1981)
SRS	JOHN PAUL II, Encyclcial *Sollicitudo rei socialis*, December 30, 1987, *AAS* 80 (1988) 513–586
SS	PIUS XII, Apostolic Constitution *Sedes sapientiae*, May 31, 1956, *AAS* 48 (1956) 334–345
StC	Studia canonica
Syn. Bish.	Synod of bishops
tit.	title
TRR	Tribunal of the Roman Rota
UDG	JOHN PAUL II, Apostolic Constitution *Universi dominici gregis*, February 22, 1996, *AAS* 88 (1996)
UR	VATICAN II, Decree on Ecumenism, *Unitatis redintegratio*, November 21, 1964, *AAS* 57 (1965) 90–112
UT	SYNOD OF BISHOPS, *Ultimis temporibus*, November 30, 1971, *AAS* 63 (1971) 898–922
VI	Liber sextus
VS	SACRED CONGREGATION FOR RELIGIOUS AND SACRED INSTITUTES, Instruction *Venite seorsum*, August 15, 1969, *AAS* 61 (1969) 674–690
VSp	JOHN PAUL II, Encyclical *Veritatis splendor*, August 6, 1993, *AAS* 85 (1993) 1133–1228
X	*Liber extra* (*Decretales Gregorii IX*)
yr.	year

TITULUS III
De interna ordinatione Ecclesiarum particularium

TITLE III
The Internal Ordering of particular churches

INTRODUCTION

Antonio Viana

1. The CIC uses the term ordinatio in this title to refer to the internal structure of the particular churches. Conceiving the canonical structure of the Church as "an eminently dynamic juridical system,"[1] here are regulated the individual offices and collective entities that make up the official organization of each particular church, and they institutionally serve the development of the Church's work of salvation in this context.

The fundamental model for this canonical regulation is the portion of the people of God termed *diocese*. Some institutions included in the title are classified as diocesan (chap. I: "The Diocesan Synod," chap. II: "The Diocesan Curia"). On occasion, the *CIC* establishes specific norms for ecclesiastical circumscriptions that, since they are bound to the concept of particular church by virtue of canonical assimilation, are not identified with the diocesan model (cf. e.g., c. 495 § 2 regarding the presbyteral council in the apostolic vicariates and prefectures). The offices and entities included in the present title are especially appropriate for territorial circumscriptions because they are normally instituted on a defined territorial basis and suppose the geographic proximity of faithful members.

In a certain way these norms function as a general context for particular or diocesan organization. Not all offices or colleges regulated here are of a prescriptive or necessary nature for the particular churches. The diocesan pastoral council, for example, will be instituted "in so far as pastoral circumstances suggest" (c. 511), as will the parish council "if ... the diocesan bishop considers it opportune" (c. 536 § 1). Another example occurs with the office of the episcopal vicar, which will be constituted "as

1. Cf. P. LOMBARDÍA, "Carismas e Iglesia institucional," in *Escritos de Derecho Canónico y de Derecho Eclesiástico del Estado*, IV (Pamplona 1991), p. 64.

often as the good governance of the diocese requires it" (c. 476). On the other hand, other institutes are not regulated in this title that undoubtedly also form a part of the diocesan institutional organization, like the major Seminary (c. 237ff) or the offices established for judicial activity of first instance (c. 1419ff). Moreover, there are cases of internal diocesan organization that require a prior participation of the Bishops' Conference to evaluate the particular situation of the territory; as a consequence, organizational differences among the particular churches result.[2] The norms of this title of the *CIC* promote, therefore, the participation of particular law—the exercise of the power of the diocesan bishop—in determining and integrating the universal dispositions.

2. From a systematic point of view, the distribution of titles effected by the legislator within this section devoted to the particular churches and its groupings has produced a resultant separation between norms established by diocesan bishops and those referring to the internal organization of the particular churches. The *CIC* situates, in effect, the supra-diocesan organization as a systematic intermediate element between the diocesan bishop and the internal structure of the particular church. This systematic criterion must not ignore, nevertheless, the fact that episcopal power (understood here in the broad sense) is not a foreign aspect superimposed on the particular church itself or on its organizations, but that it visibly gives a foundation to its unity and informs every structure (cf. *LG* 23). The particular church or diocese is a portion of the people of God in which the diocesan bishop is included, along with the presbyterate and the corresponding people (thus *CD* 11 and c. 369 provided that "Dioecesis *est* Populi Dei portio," and the people of God include lay membership and consecrated life as well as the ministerial priesthood and the hierarchy).

This observation regarding the personal composition of the particular church leads us to emphasize the comparative innovation that these canons pose regarding the previous law. In the *CIC*/1917 this entire subject was regulated from a vertical and hierarchical perspective, that is, from the power of the diocesan bishop. The corresponding title of the former *CIC* dealt significantly with "De potestate episcopali deque iis qui eadem participant." The stated participation in the power of the bishop was specified later in several offices and colleges exclusively of clerical composition (consider, e.g., the regulation of the diocesan synod, of which only the clerics formed a part—in accordance with historical evolution of the institute[3]—pursuant to c. 358 of the *CIC*/1917).

Vatican Council II promoted a profound renewal of this entire subject, not only by concerning itself with some of the institutions mentioned

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2. Cf., e.g., the cases foreseen in cc. 1733 § 2 and 502 § 3.

3. Cf. J. GAUDEMET, "Aspetto sinodale dell'organizzazione della diocesi. Excursus storico," in M. GHISALBERTI and G. MORI (Eds.), *La Sinodalità nell'ordinamento canonico* (Padova 1991), pp. 215ff.

in the present title (diocesan synod, chapter, diocesan curia, parishes: cf. *CD* 36 and 27ff), but also through envisioning diocesan institutions (presbyteral council, pastoral council, episcopal Vicar: cf. *PO* 7; *CD* 27) inspired by the new circumstances and all of them being tributary of the conciliar doctrine. In contrast to the underlying approach in the prior law, the basis for understanding the relationship of the faithful with these entities is not today primarily the distinction produced by the sacrament of holy orders or the personal conditions *in Ecclesia*, but the *fundamental* equality of all its members by virtue of baptismal regeneration; equality "regarding dignity and action" to cooperate in the building up of the Body of Christ according to one's own conditions (*LG* 32 and 208). There are two consequences to the diocesan organization of this new approach: on the one hand, the composition of the entities that organize the particular church is open to various possibilities for responsible cooperation (co-responsibility)[4] between the clergy and the lay membership (thus, the composition of the diocesan synod, pastoral council, diocesan curia, council for economic affairs, and parish councils).[5] On the other, the distinction produced by the sacrament of holy orders in the communion of the faithful (cf. *LG* 10) and the unity of consecration and mission of the presbyters with the bishop himself, which turns them into episcopal assistants united to their pastor by the bonds of hierarchical communion (cf. *LG* 28; *PO* 7), also justify the existence of diocesan institutions that foster the stable cooperation of the presbyters as counselors to the bishop (cf. *PO* 7 and c. 384) in the governance and management of the particular church.

3. Having assessed the principles regarding episcopal power, the cooperation of the presbyterate with the bishop, and the participation of all the faithful in the mission of the Church, it would now be useful to establish several classifications in relation to the various parts of the particular church.

Some preliminary classifications have already been mentioned through dealing with the preceptive or facultative constitution of the bodies and their individual or multipersonal composition, as the case may be. Also, permanent or occasional institutions can be mentioned, according to whether they stably collaborate in the ordinary activity of the diocese (e.g. the offices of the diocesan curia), or whether they do so only by virtue of a special meeting or a solemn case (the diocesan synod). On the other hand, some bodies are constituted for a fixed time (thus, the pastoral council is temporarily established, pursuant to c. 513 § 1). Temporary appointment is required for the holding of several offices (such as the episcopal Vicars, pursuant to c. 477 § 1); in other cases, in contrast, their holders are ap-

4. Cf. idem, "Sur la co-responsabilité," in *L'Année canonique* 17 (1973), pp. 533–541.
5. Cf. cc. 463, 512, 469 (together with *CD* 27), 492 § 1, 536 and 537.

pointed for an indefinite time (such is the case of the naming of the vicar general: c. 475 § 1, and normally of the parish priests: c. 522).

Still, the most important classification pertains to the various nature or functions entrusted to the diocesan offices and colleges. In this sense three organizational considerations in the internal structure of the particular church can be basically distinguished: in the first place, the offices assigned to the immediate service of the care of souls; in second place, the collaborative bodies with the bishop in the general governance and management of the dioceses; finally, the whole groups of institutions forming colleges that require the participation of the faithful in the diocese by the gathering together of a consultative organization.

The offices immediately assigned to the exercise of the care of souls, namely, the preaching of the Word and the administration of the sacraments, have a special importance by virtue of their close relationship with the objective of the particular church itself, which is gathered by the bishop "in the Holy Spirit through the Gospel and the Eucharist" (*CD* 11 and c. 369). The *CIC* devotes a good part of the canons included in the present title to the regulation of the parishes, where "the ecclesial community ... finds its most immediate and visible expression" (*CL* 26), and of the parish priests. Moreover, there are provisions regarding other offices linked to parish organization (the vicars forane) or also assigned to the exercise of the *ministerium verbi et sacramentorum* not in a substitutive sense but complementary in relation to the parishes (rectors of churches, chaplains).

In the second place, ordinary collaboration with the episcopal government is expressed through the complex of offices and groups that make up the diocesan curia. The fundamental contexts of action for the curia are the exercise of executive power in the diocese (not, in contrast, legislative power, which corresponds personally to the bishop and which ordinarily cannot be delegated: cf. c. 135 § 2 and 466), economic administration (cc. 492ff), and judicial activity of first instance (cc. 469 and 472). Besides these well-defined contexts of action, it behooves the curia to collaborate with the bishop in the management of pastoral activity (c. 469); namely, in "the exercise of works of apostolate" (*CD* 27), which was an aspect emphasized by Vatican Council II when it dealt with this subject.[6]

Finally, the groups that make up the consultative organization of the dioceses deserve a more detailed consideration within the inevitable generality and brevity of these comments.

6. Cf. F.R. AZNAR, "La nueva concepción global de la curia diocesana en el Concilio Vaticano II," in *Revista Española de Derecho Canónico* 36 (1980), pp. 419–447.

4. It is important to notice that the terminology of *consultative organization* that we employ here[7] is not settled in scientific doctrine; rather, it utilizes various vocabularies: some authors prefer to speak of "organizations of participation,"[8] others of "collegial organs,"[9] "organs or structures of co-responsibility,"[10] "offices of diocesan collaboration,"[11] etc. Certainly the diocesan councils express and foster common participation and responsibility for all the faithful in the life of the Church, but canonically the element common to all of this is precisely the consultative vote (besides their multipersonal composition). The consultative vote allows the grouping in one common general canonical idea of organizations so historically and functionally diverse as the diocesan synod, presbyteral council, college of consultors, and the pastoral council (regarding the canonical characteristics of the consultative vote, cf. c. 127).

The establishment of new consultative entities in the dioceses not present in the legislation prior to Vatican II produced several problems of orchestration in the diocesan organization, motivated on occasion by the coexistence of new organizations with the prior ones. These problems are being overcome in good measure by the experience accumulated in the period after Vatican II and by the greater certainty guaranteed by the present *CIC*. Nevertheless, several of these problems continue: for example, the indetermination of the specific competences of several councils regulated in the *CIC* (thus, the pastoral council: cf. c. 511); the high number of members in several others, which hinders their convening and functioning (cf. c. 497 regarding the composition of the presbyteral council); the simultaneous presence of the same persons in the various organizations by virtue of episcopal designation or because of the office; the absence of norms regarding the relations between groups with similar competences or that can be confused with one another (e.g. between presbyteral councils, chapter, and pastoral council); and the practical temptation to interpret the consultative vote according to the logic of the division of powers in civil law and not in the context of ecclesiastical commun-

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7. Also cf. H. SCHMITZ, "Die Konsultationsorgane des Diözesanbischofs," in J. LISTL-H. MÜLLER-H. SCHMITZ (Eds.), *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), pp. 352–364.

8. Cf. F. GIANNINI, "La Chiesa particolare e gli organismi di partecipazione," in *Apollinaris* 56 (1983), pp. 514–527.

9. "Kollegialorgane": cf. W. AYMANS, "Die Leitung der Teilkirche," in *Le nouveau Code de Droit canonique. Actes du Ve Congrès international du Droit canonique* (Ottawa 1986), II, p. 603.

10. Cf. H. MÜLLER, "Comunione ecclesiale e strutture di corresponsabilità: dal Vaticano II al Codice di Diritto Canonico," in H. MÜLLER-G. FELICIANI-J. BEYER, *Comunione ecclesiale e strutture di corresponsabilità* (Rome 1990), pp. 17–35; F. DANEELS, "De dioecesanis corresponsabilitatis organis," in *Periodica* 74 (1985), pp. 301–324.

11. Cf. A. BRESSANI, "La Chiesa particolare e le sue strutture," in *Il Diritto nel mistero della Chiesa*, II (Rome 1981), pp. 326ff.

ion,[12] which is also hierarchical communion and always requires the personal responsibility of the bishop.

In view of these and other problems presented in practice—occasionally not resolved by the general legislator—it is necessary to ensure the participation of particular law (diocesan bishop and if appropriate, the Bishops' Conference) by determining competences, distributing functions, and endeavoring to avoid the unnecessary multiplication of organizations, with the consequent risk of bureaucratizing diocesan structure. Regarding the faithful members, c. 209 § 1 expresses the obligation of always observing communion with the Church, even in their method of working. Communion is, therefore, not only the very reality of the Church (*communio cum Deo et hominibus*), but also a task, an objective that must also be obtained by participation in the diocesan councils.

12. Cf. E. CORECCO, "Parlamento ecclesiale o diaconia sinodale?," in *Communio* 1 (1972), pp. 32ff.

CAPUT I
De synodo dioecesana

CHAPTER I
The Diocesan Synod

460 **Synodus dioecesana est coetus delectorum sacerdotum aliorumque christifidelium Ecclesiae particularis, qui in bonum totius communitatis dioecesanae Episcopo dioecesano adiutricem operam praestant, ad normam canonum qui sequuntur.**

The diocesan synod is an assembly of selected priests and other members of Christ's faithful of a particular Church which, for the good of the whole diocesan community, assists the diocesan Bishop, in accordance with the following canons.

SOURCES: c. 356 §1; *CD* 28, 36; *ES* III, 20; *DPMB* 163, 165

CROSS REFERENCES: cc. 463, 466

COMMENTARY

Giorgio Corbellini

The first problem presented in the context of the revision of the *CIC*/1917, when it treated cc. 356–362, dealt with the advantageousness of conserving or suppressing the diocesan synod. Everyone agreed that it was important to preserve it.[1] Among other things, there also existed an exhortation of Vatican Council II, which, though rather generic, could not be ignored. The Council stated that the synods and the particular councils be given new life to better provide for the increase of the faith and the preser-

1. Cf. *Comm.* 24 (1992), p. 224.

vation of discipline in the various particular churches (cf. *CD* 36).[2] Further on, during the course of the drafting process of the revision of the *CIC*/1917, someone suggested that several changes be made to the proposed regulations to avoid possible dangers derived from the celebration of the diocesan synods. The suggestion was not accepted and well-founded reasons were given for its rejection.[3] One person proposed that the synod have a more pastoral nature, and should be regarded as an instrument intended to foster a better cooperation among the presbyteral council and the pastoral council (at least where the latter existed). But others did not like the adjective "pastoral," since it seemed to be a term with an unclear meaning, especially since the diocesan synod must be especially a diocesan "juridical" organ.[4] This nature of the synod was affirmed during the revision of the *Schema canonum Libri II De Populi Dei* (of 1977); in effect, it spoke of the diocesan synod as the "normal institution to update the particular legislation of the diocese."[5]

Certainly, the present c. 460 constitutes an innovation with respect to the *CIC*/1917, which did not contain an analogous canon, even though a certain parallelism (however marginal) can be seen with c. 356 § 1,[6] if the comparison is limited to the object of the diocesan synod. The present canon is like a definition, or, better, a description, of the diocesan synod: its nature, goal, and object.

Already the *DPMB* (*Ecclesiae imago*), drafted by the SCB and published on February 22, 1973, offered a rather well articulated description of the diocesan synod and its goals. There, the synod appeared as an assembly convened and directed by the bishop to which were summoned clerics, religious, and lay faithful. The bishop, by making use of experts in theology, pastoral studies, and law, and by utilizing the opinions of the various members of the diocesan community, solemnly exercised the office and ministry of guiding his flock. This exercise is translated into the adaptation of the norms of the universal Church to the particular situation of the diocese; in the indication of the methods that have to be adopted in the diocesan apostolate; in the solution of difficulties inherent to the apostolate and governance; in the stimulus of works and initiatives of a general character, in the possible correction of faith and morality. Next to these in-

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2. For that which refers to the attention given to the institution of the synod in preparation for and development of Vatican Council II, cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), pp. 7–10, 31–37.

3. Cf. *Comm.* 14 (1982), pp. 209–211, cc. 379–388; also cf. G. CORBELLINI, *Il Sinodo*..., cit., p. 41, note 186.

4. Cf. *Comm.* 24 (1992), p. 224.

5. Cf. *Comm.* 12 (1980), p. 315, c. 271. For other references regarding the present c. 460 formation, cf. G. CORBELLINI, *Il Sinodo*..., cit., pp. 45–46; also cf. *Comm.* 24 (1992), pp. 2251–252, 262, 283, c. 1.

6. In the same *Schema canonum Libri II De Populo Dei* (1977), together with c. 270 (currently c. 460) are the references to c. 356 § 1 of the *CIC*/1917 (cf. G. CORBELLINI, *Il Sinodo*..., cit., Appendix, p. 277).

stitutional goals, the synod also offers the occasion for religious celebrations particularly apt for the increase or revitalization of the faith, piety, and spirit of apostolate in the entire diocese.[7]

Etymologically speaking, "synodus," a word of Greek origin, indicates a road traveled together, a common road and, therefore, in the reality of the life of the Church, the grouping of various people *in unum* to carry out together certain goals. It is a rather generic term, used in the past to indicate various kinds of assemblies[8] of people belonging to the Church (—in general only clerics, or clerics and lay faithful together) to study problems relative to ecclesial life. Presently it is used technically—at least in the law of the Latin Church[9]—when referring to assemblies of bishops, regulated in cc. 342–348 ("Synodus Episcoporum"), and when it refers to the diocesan assembly ("Synodus dioecesana"). Nevertheless, its use in designating other assemblies in the Church, like the ecumenical councils (frequently called "Sacrosancta Synodus": cf. e.g., *LG* 1) and other assemblies, like the "Dutch pastoral synod," the "German diocesan synod," and others has not ceased.[10]

Like all regulation of diocesan synods, the present draft of c. 460, which emerges from all of the minutes preserved in the Archive of the Pontifical Council for the Interpretation of Legislative Texts and published in the periodical *Communicationes*, does not present particular difficulties. In effect, since the *Schema* of 1980 it has had the same text, the fruit of a simplification of the first and prior text present in the *Schema canonum Libri II De Populo Dei* of 1977.[11]

The words of the present canon require that, because of its nature, the diocesan synod is essentially an "assembly" (a *coetus*) of priests and other faithful of a particular church, specifically elected according to criteria fixed by c. 463 §§ 1–2, with the precise goal of collaborating with the diocesan bishop for the good of the entire diocesan community.

In the diocesan synod the nature of the Church is reflected, an assembly convened by the action of the Holy Spirit and composed of a great number of people with various gifts of nature and grace. In effect, all the essential members of the Church are represented in the synod: clerics (priests; a bishop or bishops and presbyters; deacons) and laity, as well as

7. Cf. *DPMB*, in *EV* IV, p. 1407, no. 2206.

8. Cf. J.A. FUENTES CABALLERO, "El Sínodo diocesano. Breve recorrido a su actuación y evolución histórica," in *Ius Canonicum* 11 (1981), p. 548; M. RIZZI, "De Synodis dioecesanis et de Constitutionibus synodalibus," in *Apollinaris* 28 (1955), pp. 292–294.

9. On the other hand, on that which refers to the eastern church (catholics), the *CCEO* speaks of a "Synodus Episcoporum Ecclesiae patriarchalis"—and respectively of a "Synodus Episcoporum Ecclesiae archiepiscopalis maioris"—(cf. cc. 102–113, 153); and of a "Synodus permanens" (cf. cc. 114–122). In whatever case, it always deals with Episcopal Assemblies (cf. cc. 102 § 1, 115 § 1), i.e., composed only of bishops.

10. Cf. J.A. FUENTES CABALLERO, *El Sínodo...*, cit., p. 548.

11. Cf. *Comm.* 12 (1980), pp. 314–315; also cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 45–46.

religious, through which a living image of the particular church is constituted. It is not, in this case, a genuine representation in the juridical sense, as was already observed during the course of the works of revision of the *CIC*/1917,[12] as though the members of the synod were to act in the name of the entire diocesan community—by delegation or mandate of the rest of the faithful. Because several members of the synod are "ex officio," and, especially, because the authority of governance of the particular church falls personally to the bishop by reason of episcopal order and the canonical mission (cf. *LG* 27), it does not belong to the community. Therefore, the members of the diocesan synod only have a consultative vote. The synod represents the particular church rather in the moral sense by being a sign or image of the Church.[13]

The participation of the laity as members of the synod constitutes an innovation—decided upon already the first time the diocesan synod was considered in the Commission for revision of the *CIC*/1917[14]—regarding the preceding legislation. Although in the distant past faithful members of the laity had been present in the various ecclesiastical assemblies, they were essentially those who had political power, which frequently constituted an undue interference rather than constructive participation. Therefore, Pope Gregory VII expressly prohibited their participation.[15] In the work of revision, at first, the idea was set forth that the participation of lay faithful was not on the same order as that of the holy ministers.[16]

Along with the reevaluation of the particular churches undertaken by Vatican Council II (cf. e.g., *LG* 23; *CD* 11) there was also a reevaluation of the diocesan synod, which recouped a renewed position, as an assembly proper to every particular church, and was constituted to offer a precious aid to the diocesan bishop. He rules the particular church with proper and immediate power (cf. c. 381 § 1) but he needs the contributions of all those who are its members for a stronger vitality in the particular church itself and so that it can offer a more efficacious service to men, among whom it is present.[17]

The diocesan synod constitutes one of the most evident and solemn manifestations of the particular church—especially its reality of "communion" of all those who are joined to the Father in Christ and in the grace of the Holy Spirit[18]—congregated around their pastor, whether it is a diocesan church or another of various ecclesiastical circumscriptions assimilated into the diocese (cf. c. 368).[19]

12. Cf. *Comm.* 12 (1980), pp. 314–315, c. 270.
13. Cf. *Comm.* 24 (1992), p. 252.
14. Cf. *Comm.* 24 (1992), p. 225, b.
15. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 50–51.
16. Cf. *Comm.* 24 (1992), p. 252, c. 1.
17. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 54–56.
18. Cf. ibid., pp. 10–12.
19. Cf. ibid., pp. 51–53.

The purpose of the synod is the realization of the "good of the entire diocesan community," which is evidently derived from the contributions of many people who, with various gifts, must cooperate in the building up of the Church. It is an extremely broad expression and as such understanding of all the aspects of diocesan life. In that sense, the competence of the synod cannot extend beyond the competence of the diocesan bishop for the reason that it is an organization instituted to offer him collaboration in the exercise of his ministry. Therefore, the competence of the synod cannot reach problems that affect the universal Church or other particular churches, though the competence of the synod cannot be excluded from dealing with problems that can affect other particular churches, but only to the extent that it organizes a better service to the diocese, convened in synod, for those particular churches.

Therefore, the diocesan synod will be able to deal with everything that does not exceed the competence of the diocesan bishop. In a positive sense—c. 356 § 1 *CIC*/1917 expressed in a negative form ("... dioecesana Synodus, in qua de iis tantum agendum quae ad particulares cleri populique dioecesis necessitates vel utilitates referuntur") what in the present c. 460 is said in a positive manner ("... in bonum totius communitatis dioecesanae")—all that is included in his authority of governance in the particular church, and in a negative sense, all that does not exceed it, since it is already regulated by the universal law, or superior for another reason (particular councils, Bishops' Conference, possible concordatory dispositions). Any normative decision that would be contrary to the superior legislation would completely lack validity (cf. c. 135 § 2). Accordingly, any pronouncements contained in any "declaratio synodalis" (cf. c. 466) that were to be contrary to the magisterium of the Church would be unacceptable. If in the past the diocesan synods were seen especially as instruments to draft or renew diocesan legislation, today their competence is especially regarded as key to pastoral organization, though its nature as a "juridical" diocesan organization must not be forgotten as well as its character as a normal institution for the modernization of the particular legislation of the diocese.[20] The synod seems to be the most qualified assembly to study and propose to the bishop the considerations for appropriate pastoral action so as to make more efficacious the evangelical presence and work of the Church in the specific context in which it lives. Thus, the bishop, with his authority, promulgates as binding norms (cf. c. 466) the decisions aimed at regulating the life and activity of his particular church. In this sense, it is easy to realize the potential breadth of the object of the diocesan synods.[21] The strictly diocesan nature of the synod was affirmed with particular force from the beginning, on the occasion of the revision of cc. 356–362 of the *CIC*/1917. In effect, the necessity was emphasized—

20. See above, notes 3 and 4.

21. For a more complete and detailed presentation of the purpose of the Diocesan Synod in the past and present, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 58–85.

while keeping in mind the experience of those years over diocesan synods in which questions pertaining to the universal Church were dealt with—to clearly affirm that the diocesan synod must only deal with problems referring to the needs of or things useful to the diocese:[22] for the province and for the ecclesiastical region where particular councils exist.[23]

With the Instruction *In Constitutione Apostolica* of March 19, 1997, the CB and the CEP, in order to satisfy the numerous requests received from bishops of the Latin Church, have given a series of indications, offering the bishops a means for preparing and celebrating diocesan synods as well as for correcting some defects and inconsistencies detected when the synods were held. In connection with c. 460, n. 1 is particularly important with respect to other canons related to the diocesan synod, in which useful indications are given on its nature and objective. Within the context of this commentary, given its practical dimension, it may also be useful to take into account the indications of that Instruction on the preparatory commission and the regulations (Cf. ICA, III, B), and the various preparatory phases (Cf. ICA, III, C).

22. Cf. *Comm.* 24 (1992), p. 225, c.

23. Cf. *Comm.* 24 (1992), p. 224; in that context it was emphasized that a certain council, designated "pastoral," which was celebrated by an entire nation, constituted a practice "praeter ius, immo contra ius."

461 **§ 1. Synodus dioecesana in singulis Ecclesiis particularibus celebretur cum, iudicio Episcopi dioecesani et audito consilio presbyterali, adiuncta id suadeant.**

§ 2. Si Episcopus plurium dioecesium curam habet, aut unius curam habet uti Episcopus proprius, alterius vero uti Administrator, unam synodum dioecesanam ex omnibus dioecesibus sibi commissis convocare potest.

§ 1. The diocesan synod is to be held in each particular Church when the diocesan Bishop, after consulting the council of priests, judges that the circumstances suggest it.

§ 2. If a Bishop is responsible for a number of dioceses, or has charge of one as his own and of another as Administrator, he may convene one diocesan synod for all the dioceses entrusted to him.

SOURCES: § 1: c. 356 § 1; SCPF *Direttive per Sinodi interdiocesani*, 27 ian. 1979
§ 2: c. 356 § 2

CROSS REFERENCES: —

COMMENTARY

Giorgio Corbellini

Paragraph 1 of this canon has its immediate source in c. 356 § 1 of the *CIC*/1917. Nevertheless it contains various and sometimes notable innovations with respect to the former law. Right from the start, concerning the revision of c. 356 § 1 of the *CIC*/1917, it presented the problem of frequency of the celebration of the diocesan synod. Everyone decidedly agreed upon the importance of preserving c. 356, with opportune modifications, especially regarding the determination of the time of celebration.[1] Someone considered it better not to determine specifically the time of celebration since the circumstances of one diocese are different from another. Another person wanted a decennial cycle and provided the bishop the possibility of delaying the time, after consulting his presbyteral council, but without the intervals ever surpassing twenty years. Another considered it necessary to establish a kind of objective obligation, so that to exceed the interval of twenty years, the bishop would need to ask permis-

1. Cf. *Comm.* 24 (1992), p. 225, c. 356 *CIC*.

sion of the Holy See, not of the Bishops' Conference.[2] Nevertheless, the rest did not consider it necessary to include that provision: another even suggested a quinquennial limit, but that obligation was not accepted, considering that the bishop could place such a limit if he wished.[3] Another person, keeping in mind that every five years the bishop must make a pastoral visit of the diocese and send to the Holy See a report *super statu dioceses*, saw in these actions a great opportunity to prepare for the diocesan synod.[4] Finally the idea prevailed of maintaining the cycle envisioned in c. 356 § 1 of the *CIC*/1917, translated in the *Schema* of 1977, that is *decimo saltem anno*, but with the possibility of changing it—not beyond twenty years—if, in the judgment of the bishop, the circumstances called for such a change.[5] Several consultative bodies proposed that the synod be celebrated more frequently, but it was preferred at first to maintain the envisioned cycle, especially considering that "the synod continued being a normal institution for the modernization of the legislation of the diocese, and therefore, it had sufficient elasticity to prevent constant and frequent normative revision (which would be dangerous).[6] Afterwards, the several proposals in mind, it was decided not to determine the time for celebration by leaving the decision to the bishop *audito consilio presbyterali.*[7]

If we observe history, it is noticed that the cycle of celebration was from the beginning generally annual, when not twice a year. But that practice—supported in the norms of the particular councils and converted later into a universal norm in the fifth Lateran Council (1215)—was not always faithfully followed, notwithstanding the repeated calls of the successive ecumenical councils, for which the provision for a decennial celebration was established in the *CIC*/1917, but which was likewise rarely respected.[8]

The provision of the present c. 461 § 1 is undoubtedly very wise, since it leaves to the personal responsibility of the bishop the decision regarding the convening of the synod, by considering the circumstances that could call for it. As we have observed, history shows that the norm that imposes the celebration of the diocesan synod (first annually and later decennially) has been frequently unattended for the most varied of reasons. Today, undoubtedly, it is better to have a more elastic norm, which ap-

2. Cf. *Comm.* 24 (1992), pp. 224–225, a.
3. Cf. *Comm.* 24 (1992), p. 253, c. 2.
4. Cf. *Comm.* 24 (1992), p. 225, c. 356 *CIC*.
5. Cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), Appendix, p. 277, c. 271 § 1.
6. Cf. *Comm.* 12 (1980), p. 315, c. 271.
7. Cf. *Comm.* 14 (1982), p. 210, c. 380. For other information regarding the formation of c. 461 § 1, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 88–89; also cf. *Comm.* 24 (1992), pp. 253, 262, 284, c. 2 § 1.
8. For a more detailed and complete outlook, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 86–88; also cf. pp. 14–31.

peals directly to the personal responsibility of governance of the diocesan bishop, especially keeping in mind the effort posed by the preparation for and celebration of a diocesan synod. At the same time this is more respectful both of the extraordinary nature of the diocesan synod and of the responsibility proper to each diocesan bishop who, in harmony with the exigencies of his particular church and after consulting his presbyteral council, decides when it is necessary and opportune to convene one.[9]

Pursuant to c. 127 § 2,2°, it is clear that the bishop is obliged to consult his presbyteral councils, under penalty of invalidating the act. But he is not obliged to follow their opinions, though it would not be prudent not to do so without a good reason, as the cited canon itself suggests.[10]

During the revision, it had been suggested that the pastoral council also be consulted. But that proposal was not accepted, since the decision to celebrate a diocesan synod constituted an act proper to the governance of the diocese,[11] and therefore would exceed the competence proper to the pastoral council.

Regarding the place of celebrating the synod, c. 357 of the *CIC*/1917 was not restated—by virtue of a decision adopted already from the beginning[12]—which indicated as a norm that the natural place for celebrating the synod was the cathedral church. Even without a relevant norm, considering the meaning both of the synod and cathedral for the life of a particular church, no doubt the cathedral continues to be the most likely place for the celebration of the diocesan synod, at least for its most solemn acts and for the necessary liturgical celebrations by which the entire synod should be nourished (cf. DPMB 163).[13]

Paragraph 2 of this canon substantively gathers together, though with different terminology, the provision of the former c. 356 § 2.[14]

It is the fruit of practical wisdom especially. It does not constitute an obligation, but a possibility for the bishop (a faculty or right). Its aim is both not to multiply the onerous work of the bishop—and of his assistants—in preparation for more than one diocesan synod, and to foster more intense communion among the particular churches entrusted to his pastoral care by offering to these churches the possibility of jointly celebrating that common extraordinary occurrence of the diocesan synod.

9. Some useful directions on the circumstances that may suggest that a diocesan synod be convened in ICA, III, A, 1.

10. For a more complete picture of the problems related to the norm of c. 461 § 1, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 86–93.

11. Cf. *Comm.* 14 (1982), p. 210, c. 380.

12. Cf. *Comm.* 24 (1992), p. 225, c. 357 *CIC*.

13. For further considerations regarding where the diocesan synod was held in the past, and the significance of the cathedral in diocesan life, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 120–122.

14. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 238–249.

Otherwise, it is a matter of—at least presently—rather rare situations, since in the vast majority of the cases the bishops are not entrusted with the governance of more than one diocese.

During the work of revision of the *CIC*/1917, someone had observed that the needs of dioceses are not the same, for which it was not opportune to preserve the norm; but it was preferable to maintain it, since it did not establish the requirement of only one synod for several dioceses, but only a possibility.[15]

On the other hand, there is the distinct problem of celebrating a single diocesan synod for various dioceses entrusted to the pastoral care of different bishops. The famous Dutch pastoral council was also distinct, constituting what was until then an unknown kind of event in the juridical experience of the Church, which was considered not only *praeter ius* but even *contra ius*.[16] Several cases have occurred in recent years, but prior to the promulgation of the Code, specifically in Germany (a single synod for all the German dioceses and in Switzerland, although they tried something more distinct from the ones previously mentioned in its preparation and juridical expression, with the simultaneous but distinct common preparation and celebration of synods in each of the dioceses). The common synod for the German dioceses was celebrated after having asked for and obtained the approval of the statutes on the part of the Holy See.[17] In its celebration all the participants had a deliberative vote and the bishops voted with other members.[18] Certainly, it was a reality not envisioned or regulated by canonical legislation, but celebrated with the approval of the Supreme Pontiff.[19] In contrast no approval was necessary for the celebration of the synod of the Swiss dioceses because they were distinct events, which took place within the boundaries of each one of the dioceses, though many acts of preparation were celebrated in collaboration with all the dioceses.[20]

Afterwards (January 31, 1976), several "direttive per Sinodi interdiocesani" were issued by the Holy See—through the Sacred Congregation for bishops, by virtue of its superior disposition and in accordance with other dicasteries—which likewise were made known to several pontifical representations of missionary territories on January 27, 1979, by the

15. Cf. *Comm.* 24 (1992), p. 253, c. 2. For other information regarding the redaction of c. 461 § 2, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 239–240; also cf. *Comm.* 24 (1992), pp. 253, 262, 284, c. 2 § 2.

16. Cf. *Comm.* 24 (1992), p. 224.

17. Cf. SCE, Decr. *Germaniae ditionis*, 14.II.1970, Prot. N. 122/69, in X. OCHOA, *Leges Ecclesiae post Codicem Iuris Canonici editae*, IV (Rome 1974), n. 3829, col. 5756.

18. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 253, 269.

19. For a detailed presentation of the problems related to this event, which come from the canonical normative currently in force, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 249–261.

20. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 262–266.

Sacred Congregation for the Evangelization of Peoples.[21] There it was clearly affirmed that: (1) the synod is a juridical diocesan institution, which can never have an inter-diocesan character; (2) for an analogous meeting at a provincial or national level, the structures envisioned in the *CIC* and pertinent to each case, namely, the provincial and plenary councils must be used; (3) any other kind of ecclesial assembly, without the juridical characteristics proper to the synod or council, cannot even take that name, and must clearly state its exclusively consultative and investigatory nature; (4) in assemblies of that kind, the bishops will take part in the discussion, but not in the voting on possible conclusive documents; (5) the object of these assemblies will be the study and discussion of issues relative to the demands of the particular churches and its needs, but care must be taken to refrain from discussing doctrinal or disciplinary matters already dealt with and authoritatively resolved; and (6) possible conclusions can acquire legal validity only by decrees from the bishops, individually (each one for his diocese), or gathered *ad normam iuris* in Bishops' Conferences.[22]

Today no doubt exists, pursuant to the regulation of the present Code—fully in line with the former regulation—that the synod is an exclusively diocesan occurrence, except for the provisions of § 2 for particular churches entrusted to the pastoral care of the same bishop.

21. Cf. X. OCHOA, *Leges Ecclesiae...*, cit., VI (Rome 1987), n. 4685, cols. 7671–7672.
22. Also cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 266–269.

462 **§ 1. Synodum dioecesanam convocat solus Episcopus dioecesanus, non autem qui ad interim dioecesi praeest.**

§ 2. Synodo dioecesanae praeest Episcopus dioecesanus, qui tamen Vicarium generalem aut Vicarium episcopalem pro singulis sessionibus synodi ad hoc officium implendum delegare potest.

§ 1. Only the diocesan Bishop can convene a diocesan synod. A person who has interim charge of a diocese cannot do so.

§ 2. The diocesan Bishop presides over the diocesan synod. He may, however, delegate a Vicar general or an episcopal Vicar to fulfil this office at individual sessions of the synod.

SOURCES: § 1: c. 357 § 1; *DPMB* 163
§ 2: c. 355 § 1

CROSS REFERENCES: c. 461

COMMENTARY

Giorgio Corbellini

This canon states, with opportune modifications, the norms of c. 357 § 1 of the *CIC*/1917.[1] Faced with a draft that repeated the preceding disposition—according to which the diocesan synod could not be convened and presided over by the vicar general (nor by the episcopal vicar nor the diocesan administrator) without *speciali mandato*—someone requested that only the bishop be able to convene the synod, which was immediately accepted by the rest. Because of other comments, the canon was divided, right from the beginning, into two paragraphs, in which different norms were established regarding the right of convening and presidency.[2] In contrast, from the first time cc. 356–362 of the *CIC*/1917 were examined it was considered unnecessary to preserve § 2 of c. 357.[3] The text of § 1 was afterwards the object of some final touches, but they did not change the substance of the disposition, even though the new draft did not exactly re-

1. Cf. *Comm.* 24 (1992), p. 225, c. 357 *CIC.*
2. Cf. *Comm.* 24 (1992), p. 253, c. 3; also cf. pp. 262, 284.
3. Cf. *Comm.* 24 (1992), p. 225, c. 357 *CIC.*

spect the meaning of the comments made in the debates.[4] In a subsequent step other final touches were also made, but they were not substantive.[5]

The new draft of § 1 makes it unequivocal that the duty to convene the synod falls only and exclusively to the diocesan bishop, without there being any other possibility. This is in contrast to the prior regulation, in which it was envisioned that the vicar general or the vicar capitular, with a special mandate—in the first case, from the bishop; in the other, evidently, from the chapter of canons—could convene the synod.

The new formulation emphasizes the personal and exclusive responsibility of the bishop in an act so important in the life of a particular church. Although the bishop cannot lawfully act without having considered the opinion of his presbyteral council regarding the possible convening of the diocesan synod (cf. cc. 461 § 1 and 127 § 2,2°), the decision to convene does not therefore cease being a totally personal act of the bishop himself. Likewise *Directory on the Pastoral Ministry of Bishops*, 163 explicitly affirms that the diocesan synod is convened and presided over by the bishop.

Moreover, keep in mind the importance of the diocesan synod in itself as a moment of life in a particular church and an experience of its communion, as well as the dedication and time required for its preparation so that it can involve the largest number of faithful and constitute an event that has an impact on daily life. Consider, too, its necessary consequences, even in the long run, in the life of the diocese. It is a very wise measure that only the bishop and not others— nor, particularly, one who only governs the diocese "ad interim"—can decide to convene the synod and may in fact do so. In effect, although the bishop has need of many collaborators, some even with tasks of great responsibility, no one can take his place in the exercise of an authority that comes to him directly from God in the pastoral governance of the particular church entrusted to his care, and which is, therefore, strictly personal. Everything said of the diocesan bishop is applicable also to all those who are comparable to him by law (cf. c. 381 § 2), and likewise regarding the convening of the diocesan synod.[6] Paragraph 2 of this canon is also derived from c. 357 § 1 of the *CIC*/1917, which provided identical norms regarding the convoking of and presidency over the diocesan synod. But from the beginning of the work of revision it was preferred to separate the norms regarding convening and presidency into two different paragraphs.[7] In a certain sense it can be

4. Cf. *Comm.* 24 (1992), pp. 265, 284, c. 3 § 1.
5. Cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), respectively, pp. 124–125 and 130–131.
6. For a more complete treatment of c. 462 § 1, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 123–130.
7. Cf. *Comm.* 24 (1992), pp. 253, 262, 284, c. 3.

said that § 2 is less removed from the canon of the *CIC*/1917 than § 1, since it has acknowledged, even though in a way appropriately revised, the principle that the bishop, in the exercise of presiding over the synod, can be, if not substituted for, at least aided by the vicar general and/or by the episcopal vicar in certain sessions. This principle was introduced on the occasion of the revision of the *Schema canonum Libri II De Populo Dei* (1977), based on a proposal received and with the idea of avoiding a negative formulation and possible doubts;[8] and it was promulgated in the Code—through the *Schema novissimum* (1982)[9]—without more changes than the suppression of the locution *cum mandato speciali.*

Presidency is a function consequent on the convening the synod. From the provision that only the diocesan bishop can convene it, it follows as a logical consequence that only he can preside over it, although reasons of a practical nature have suggested that he can delegate to the vicar general or episcopal vicar the authority to preside over certain sessions. It is clear that the theological and juridical reasons that are found as the basis of the exclusive power of the diocesan bishop to convene the synod are also the reasons that form the basis of this exclusive right to preside over it, even though several acts of the synod—even of a certain solemnity, as some sessions can be—can have a delegated president.

The reference to the possible delegated presidents is clearly indicated: the vicar general or the episcopal vicar, who can be more than one person, although there should be only one vicar general.[10] In case of there being more than one vicar general or episcopal vicar, it is up to the bishop to determine to which of them he will delegate the function of presiding over some sessions and which session they will preside over. He may establish turns for presiding over those sessions or he can entrust the presidency of all the sessions to just one person. When delegating to the vicar general or to the episcopal vicar, it is appropriate for the diocesan bishop to give preference to those holding the rank of bishop: coadjutor bishop and auxiliary bishops (Cf. ICA, II, 1).

It is not difficult to understand what the function of presiding entails, since it extends to everything that affects the regulating of the celebration of the synod as a whole and of each one of its sessions; but it will be the mission of the regulations to determine more precisely each one of the acts. No doubt, the presidency entails the decisions regarding the acts relative to the opening, development, and conclusion of the synod as a whole and of each one of its sessions (e.g., the commencement and method of

8. Cf. *Comm.* 12 (1980), p. 316.
9. Cf. G. CORBELLINI, *Il Sinodo...*, cit., Appendix, p. 279, c. 462 § 1.
10. Cf. cc. 475 § 2 and 476 *CIC* respectively.

conducting the debates, etc.). While the bishop as president has all the power that is proper to him by reason of his office within the particular church, the delegated president—or delegated presidents—has the powers explicitly granted in the act of delegation and possibly envisioned in the regulation approved by the bishop, and they must be exercised always in the name of the president in subordination to him.[11]

11. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 130–136. In the context of § 2 of this canon, it may be also useful to take into account that which is indicated in the Instr. ICA on the development of the synod (cf. ICA, IV).

463 **§ 1. Ad synodum dioecesanam vocandi sunt uti synodi sodales eamque participandi obligatione tenentur:**
1° Episcopus coadiutor atque Episcopi auxiliares;
2° Vicarii generales et Vicarii episcopales, necnon Vicarius iudicialis;
3° canonici ecclesiae cathedralis;
4° membra consilii presbyteralis;
5° christifideles laici, etiam sodales institutorum vitae consecratae, a consilio pastorali eligendi, modo et numero ab Episcopo dioecesano determinandis, aut, ubi hoc consilium non exstet, ratione ab Episcopo dioecesano determinata;
6° rector seminarii dioecesani maioris;
7° vicarii foranei;
8° unus saltem presbyter ex unoquoque vicariatu foraneo eligendus ab omnibus qui curam animarum inibi habeant; item eligendus est alius presbyter qui, eodem impedito, in eius locum substituatur;
9° aliqui Superiores institutorum religiosorum et societatum vitae apostolicae, quae in dioecesi domum habent, eligendi numero et modo ab Episcopo dioecesano determinatis.

§ 2. Ad synodum dioecesanam ab Episcopo dioecesano vocari uti synodi sodales possunt alii quoque, sive clerici, sive institutorum vitae consecratae sodales, sive christifideles laici.

§ 3. Ad synodum dioecesanam Episcopus dioecesanus, si id opportunum duxerit, invitare potest uti observatores aliquos ministros aut sodales Ecclesiarum vel communitatum ecclesialium, quae non sunt in plena cum Ecclesia catholica communione.

§ 1. The following are to be summoned to the diocesan synod as members and they are obliged to participate in it:
1° the coadjutor Bishop and the auxiliary bishops;
2° the Vicars general and episcopal Vicars, and the judicial Vicar;
3° the canons of the cathedral church;
4° the members of the council of priests;
5° lay members of Christ's faithful, not excluding members of institutes of consecrated life, to be elected by the pastoral council in the manner and the number to be determined by the diocesan Bishop or, where this council does not exist, on a basis determined by the diocesan Bishop;
6° the rector of the major seminary of the diocese;

7° the vicars forane;
8° at least one priest from each vicariate forane to be elected by all those who have the care of souls there; another priest is also to be elected, to take the place of the first if he is prevented from attending;
9° some Superiors of religious institutes and of societies of apostolic life which have a house in the diocese: these are to be elected in the number and the manner determined by the diocesan Bishop.

§ 2. The diocesan Bishop may also invite others to be members of the diocesan synod, whether clerics or members of institutes of consecrated life or lay members of Christ's faithful.

§ 3. If the diocesan Bishop considers it opportune, he may invite to the diocesan synod as observers some ministers or members of Churches or ecclesial communities which are not in full communion with the catholic Church.

SOURCES: § 1, 2°: c. 358 § 1, 1°
§ 1, 3°: c. 358 § 1, 2°
§ 1, 5°: SCB Rescr., 29 maii 1968
§ 1, 6°: c. 358 § 1, 3°
§ 1, 7°: c. 358 § 1, 4°
§ 1, 8°: c. 358 § 1, 7°
§ 1, 9°: c. 358 § 1, 8°
§ 2: c. 358 § 2
§ 3: SPCU Directorium, I, 14 maii 1967, 3–6; 25–63

CROSS REFERENCES: —

COMMENTARY

Giorgio Corbellini

1. This canon restates the norm of c. 358 of the *CIC*/1917, but with profound modifications. Regarding § 1, which lists the members by law of the synod, various issues were presented from the beginning of its revision. First, whether or not to mention explicitly the coadjutor bishop, the auxiliary bishops, and the episcopal vicars. Someone thought that the duties of the presbyteral council and the pastoral council coincided with those of the synod and that, therefore, the relations between these different organizations should be regulated. But it was observed that the presbyteral council represents the diocesan presbyterate and, therefore, it must always exist, from the moment when the bishop with the presbyters presides over the portion of the people of God constituted by the diocese.

The pastoral council, for its part, is facultative and does not represent the people of God; moreover, depending on the subject to be considered by the synod, the members of the pastoral council do not have to be invited to participate in the synod. Therefore, these two councils cannot be considered in any fashion in the same line as the synod. Regarding the lay faithful who can be invited, it was thought to be important that they be designated by the pastoral council, if it exists, but that the bishop could also invite other lay faithful. It was considered necessary to preserve, in addition to no. 1°, nos. 2°, 3°, 4° (but not nos. 5° and 6°), 7° and 8° (both with modifications). Afterwards it was preferred not to speak of "unus saltem parochus ex unoquoque vicariatu foraneo, eligendus ab omnibus qui curam animarum actu inibi habeant" (n. 7°), but of "unus saltem presbyter ab Episcopo eligendus secundum modum ab ipso Episcopo determinatum"; but in fact that proposal was dropped in the draft produced in sess. XI.[1] It was also considered opportune to provide for the summoning of some deacons, where there were deacons. Regarding no. 8°, a provision was approved according to which there had to be invited a representation from the institutes of perfection (today institutes of consecrated life), pursuant to norms that should be established by the particular law.[2]

In the initial drafting of the text, the vicars general and the episcopal vicars were mentioned (n. 1°); the canons of the cathedral (n. 2°); the members of the presbyteral council (n. 3°); the delegates of the pastoral council, elected by the council in the manner and number fixed by the diocesan bishop, or if no pastoral council exists, some faithful representative of the particular church designated in a manner set by the bishop (n. 4°); the rector of the diocesan major seminary (n. 5°); the vicars forane (n. 6°); at least one presbyter from each forane vicariate, chosen by those who exercise the care of souls there (also be chosen a presbyter to substitute in case of his absence; no. 7°); and some superiors (both men and women) of the institutes of perfection that have a house in the diocese, chosen in the manner and number determined by particular law (n. 8°). Among the various suggestions made, some were accepted to better the text, both in its content and formulation. It did not seem opportune to speak of "delegates" from the presbyteral council, but to provide for the participation of the entire council (n. 3°). Likewise, it did not seem necessary to mention the rector of the minor seminary (n. 5°), since he could always be invited pursuant to § 2, or of the Abbots *de regimine* (n. 8°). In contrast, it was considered opportune to eliminate every reference to the "representation" of the Christian people by the lay faithful (n. 4°) for the reasons adduced during the drafting of c. 1 (presently c. 460).[3]

1. Cf. *Comm.* 24 (1992), p. 254, c. 4.
2. Cf. *Comm.* 24 (1992), p. 226, c. 358 *CIC*.
3. Cf. *Comm.* 24 (1992), pp. 254–255, c. 4.

Afterwards some changes were made to make the formulation of no. 8° clearer and to avoid mistaken interpretations. At the same time it was not considered opportune to put nos. 5° and 6° before no. 3° because it was not a matter of following the protocol of rank for persons, but of the importance of the functions.[4]

In the *Schema* of 1977[5] subsequent modifications were introduced. The most important were the introduction—as no. 1°—of the coadjutor bishop and the auxiliary bishops and the addition to no. 2° (then 1°) of the judicial vicar.[6]

Finally § 1 was stated in nine paragraphs. We will look closely are each one of them.

— no. 1°: The participation—as right-duty—of the *coadjutor bishop* and of the auxiliary bishops in the diocesan synod is a consequence of the assessment of their figure in the hierarchical organization of the particular church, carried out by the Council,[7] likewise as a consequence of the doctrinal clarification of the sacramental nature of the episcopate.[8] In the past they were involved in a less direct way in the pastoral governance of the diocese, since they were rather mere executors and almost never had ordinary power, the vicar general being normally someone else.[9] The Council provided that the coadjutor bishop should always be appointed vicar general and that the auxiliary bishops be appointed vicars general or at least episcopal vicars (cf. *CD* 26), excepting always, however, the unity of diocesan governance and reciprocal harmony in the service of a common particular church (cf. *CD* 25). Moreover, as a general norm, their powers should not cease on the death of the diocesan bishop (cf. *CD* 26). The dispositions of the Council received normative sanctions regarding the auxiliary bishops in *Ecclesiae Sanctae* I, 13, and were faithfully received in the *CIC*.[10] From this appropriate assessment of the office and role of the coadjutor bishop and auxiliary bishops in the pastoral governance of the diocese derives the prudent prescription of c. 463 § 1, which puts them in first place among those mentioned by law. This is obvious since they are in-

4. Cf. *Comm.* 24 (1992), pp. 265, 284, c. 4 § 1. There was some later retouching done to no. 4° (cf. *Comm.* 25 (1993), p. 74, c. 4 § 1).

5. Cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), Appendix, pp. 278–279; also cf. *Comm.* 24 (1992), pp. 262–263, 284, c. 4 § 1.

6. Cf. *Comm.* 12 (1980), pp. 316–317; G. CORBELLINI, *Il Sinodo...*, cit., p. 164.

7. Cf. *CD* 25–26.

8. Cf. *LG*, ch. III, especially no. 21.

9. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 167–168; 165.

10. For the coadjutor bishop, cf. cc. 403 § 3, 404 §§ 1 and 3, 405, 406 § 1, 407 §§ 1 and 3, 408, 409 § 1, 410–411, 413, 414; for the auxiliary bishop, cf. cc. 403 § 1 (and 2), 405 § 1, 406 § 2, 407, 408, 409 § 2, 410–411, 413 §§ 1 and 3, 414, 419, 422.

volved completely in an event so meaningful for the life of the particular church, in the service of which they are to exercise the episcopal ministry.[11]

— no. 2°: The *CIC*/1917 envisioned the participation of the *vicar general*; not, evidently, of the *episcopal vicars*, who are a creation of the council, nor the *judicial vicar*, though a figure already existed, called then *officialis*. (Today he can be designated by both names.)[12]

The vicar general can exist, as a distinct person, in the dioceses in which there is a coadjutor bishop, who must be appointed vicar general (cf. c. 406 § 1). In those dioceses that have auxiliary bishops, they must be appointed vicars general, or at least episcopal vicars (cf. c. 475 § 2). His participation for being a member by law in the diocesan synod does not derive from his specific function in the hierarchical structure of the particular church, as the first assistant to the bishop *in universae dioecesis regimine* (c. 475 § 1), since the office of vicar general is preeminent in the diocesan curia (cf. *CD* 27).

Regarding the episcopal vicars, this is a new figure with respect to the former canon, desired by Vatican Council II when the "rectum dioecesis regimen" required it, and endowed of the same power as that of the vicar general,[13] though limited to a certain part of the diocese or to certain subjects, or to the faithful of a certain rite. In *Ecclesiae Sanctae* I, 14, there were afterwards established determinations and specifications, and c. 476 has received almost "ad litteram" the text of *Christus Dominus* 27. Keeping in mind the close collaboration in diocesan governance, in a manner more restricted than that of the vicar general, but thus more specific, the Code has established their right-duty of participating in the diocesan synod.[14]

Likewise the judicial vicar—a figure whose novelty is in name only—is a member by law of the synod, which the *CIC*/1917 did not contemplate. Here an important sign of the value of the ecclesial and pastoral scope of the judicial function in the Church in the service of its essential end must be recognized, which is the realization of the *salus animarum* (cf. c. 1752). No doubt, this right-duty of the judicial vicar is in connection with the institution of the episcopal vicars and with the provision for his being summoned to the diocesan synod. It would have been incongruent that the judicial vicar, whose "munus" is a particular application of the function of the episcopal vicars in the specific field of the administration of justice (vicarious power in the entire diocese in judicial matters, although, pursuant to c. 134 § 1, he is not an ordinary nor an object of an

11. For a more complete presentation, cf. G. CORBELLINI, *Il Sinodo*..., cit., pp. 165–168.
12. Cf., respectively, *CIC*/1917, c. 1573 § 1 and *CIC*, c. 1420 § 1.
13. Cf. *CD* 27; also, 23 and 26.
14. For more extensive considerations in this regard, cf. G. CORBELLINI, *Il Sinodo*..., cit., pp. 169–170.

identical regulation to that relative to the vicar general and the episcopal vicars),[15] was not envisioned as a member by law of the synod, keeping in mind also the importance that the administration of justice possesses in the governance of the Church (c. 135 § 1) and in the particular church. His participation in the diocesan synod is important because of the contribution he can furnish from his accumulated experience from his ministry as judge, regarding many pastoral options, especially in the fields in which justice can most easily be compromised, and in those where particularly precious values for the Church and for the salvation of souls are at risk, like the validity of marriages.[16]

— no. 3°: There is nothing new with respect to the *CIC*/1917 about the participation of the canons of the cathedral church as members by law. In contrast are the provisions of c. 358 § 1,5° of the *CIC*/1917 relative to the participation of a delegate for each collegial chapter. This was decided from the beginning.[17] No doubt it is due to the fact that the collegial chapter affects only a few particular churches and in practice has lost much of its importance. Moreover, those councils could be represented through other channels (e.g., through one of their members belonging to the presbyteral chapter). For their part, the cathedral chapters, profoundly renewed regarding their objectives by the new Code (cf. c. 503), by following the directions of the Council (cf. *CD* 27) and those of the resulting documents—which showed a practical and normative situation eminently temporary and mindful of the Council, but also in notable harmony with the *CIC*/1917[18]—have been reinvested, in universal law, with an essentially liturgical function. However, they can still be entrusted with other functions (cf. c. 503) by the law or another diocesan bishop. In particular, the Bishops' Conference could assign to the chapters the attributions proper to a college of consultors (cf. c. 502 § 3), functions of greater importance in diocesan governance,[19] and which in the *CIC*/1917 were proper to the cathedral chapter. It might be enough to definitively cite the norm of c. 391 § 1 of the former Code, regarding the purpose of the cathedral college, instituted "ut Episcopum ... tanquam eius senatum et consilium, adiuvet, ac, sede vacante, eius vices suppleat in dioecesis regimine." The right-duty of the chapter to be summoned and to participate in the diocesan synod derives especially from its institutional function of celebrating the most solemn liturgical ceremonies in the cathedral—a diocesan synod must be characterized and vivified by solemn liturgical celebrations

15. Cf. cc. 481 and 1420 § 5.
16. Cf., for other considerations, G. CORBELLINI, *Il Sinodo...*, cit., pp. 170–173.
17. Cf. *Comm.* 24 (1992), p. 226, c. 358 *CIC*.
18. Cf. *ES* I, 17 § 2; SCCong, *Litterae circulares ad Praesides Conferentiarum Episcopalium de Consiliis Presbyteralibus iuxta placita Congregationis Plenariae die 10 octobris 1969 habitae*, "Presbyteri sacra," April 11, 1970, no. 10, in *AAS* 72 (1970), p. 464; *DPMB*, 136, 205.
19. Cf., in addition to c. 502, cc. 272, 377 § 3, 382 § 3, 404, 413 § 2, 419, 421 § 1, 422, 430, 485, 494 §§ 1–2, 501 § 2, 1018 § 1, 2°, 1277, 1292 § 1.

(cf. *DPMB* 165)—and, where it has been established, on a notably responsible level together with the diocesan bishop in the governance of the particular church. At least individually, many members of the chapter will be able to contribute their rich experience, matured in the most varied ministries in the service of the Church, according to the issues of a pastoral or strictly normative nature that will be the object of study in the synod and, afterwards, of a decision by the bishop (cf. cc. 465–466).[20]

— no. 4°: The presbyteral council, which was instituted by the express will of the Council,[21] and in which a nature was later specified by various instances of documents from the Holy See,[22] even including the regulations of the Code,[23] must be invited to the synod in its entirety and is obliged to take part in it. In effect, the proposal that only "delegates" of the presbyteral council could be summoned to the synod, and not the council entirely as such, was not accepted.[24] Its nature of *senatus Episcopi* and its function of representing all of the presbyterate and of aiding the bishop in the governance of the diocese, with the purpose of realizing in the best possible way that the pastoral welfare of the portion of the people of God which constitute it (cf. c. 495 § 1) is the real reason for their participation in the diocesan synod. Indeed, that function showers forth a special and particular experience, which can lead to a priceless contribution to the development of the synod and to the drafting of its decisions. The council is also, since it is a representative body of the entire diocesan presbyterate, the natural vehicle for the problems of the clergy and for their pastoral experiences, and therefore of what all the clergy can offer to the particular church through the daily carrying out of their ministry.[25]

— no. 5°: The participation of the lay faithful as members by law on equal standing with the others is, certainly, one of the innovations most evident with respect to the prior legislation that excluded them.[26] It was the Council that, while expounding its doctrine regarding the Church, granted them an ample space, the context of *Lumen gentium*, whose chapter IV is devoted completely to the lay faithful. Moreover, a complete document—the Decree *Apostolicam actuositatem*—deals exclusively with their apostolate. The doctrine of the council regarding the nature of the lay faithful belonging to the Church (expressed especially in *Lumen*

20. For a more complete discussion of the participation of the canons of the cathedral church in the synod, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 173–177.

21. Cf. *PO* 7 (also cf. *LG* 28).

22. Cf., in particular, *ES*, I, 15; SCCong, *Litterae circulares ad Praesides...*, cit., pp. 459–465; Synodus Episcoporum, *Ultimis temporibus*, Pars altera, I, 1; *DPMB*, 60, 165, 178, 187. Other documents, cited in G. CORBELLINI, *Il Sinodo...*, cit., p. 182, notes 42 and 43.

23. Cf. cc. 495–501.

24. Cf. *Comm.* 24 (1992), p. 254, c. 4.

25. For a more complete picture regarding the evolution of this diocesan organism—from the Council to the Code—through the various acts of the Holy See, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 177–183.

26. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 183–184.

gentium), and regarding their participation in the mission of the Church (conveyed principally in *Apostolicam actuositatem* and solidly based in Holy Scripture), betokens an extraordinary richness and constitutes an extremely efficacious point of departure for a rediscovery by everyone of their fundamental dignity as members of the Church, in which they are fully entitled to belong.[27] From that doctrine is derived the decision to involve them together with clerics and religious in an organization thought naturally to be at the diocesan level: the pastoral council, which was desired by the Council itself and which has the function of studying and examining all that refers to pastoral activity and of proposing practical solutions (cf. *CD* 27). The Code has faithfully received the doctrine of the Council, especially in cc. 224–231 (cf. also cc. 204–223); but also in many other places, beginning in cc. 511–514,[28] in which the principle is conveyed in practical norms of their belonging to the Church, their requisite entitlements, and of their participation in its mission with the specific responsibilities and function of direct collaboration in the power of governance.[29] Canon 463 § 1,5°, on providing for the participation of the laity and members of institutes of consecrated life in the diocesan synod, desired that they be chosen by the pastoral council according to the manner and number established by the diocesan bishop, or else, where this council does not exist, in the manner determined by the bishop himself. At first, keeping in mind the facultative character of the institution of the pastoral council (clearly different than the presbyteral council) and the fact that it does not represent the people of God, and its typical subject matter, it had been thought that the members of the pastoral council did not necessarily have to be invited to the synod.[30] Certainly, keeping in mind the functions of the diocesan pastoral council in which the desire for apostolic service that motivates the Church should be conveyed, this council is the most appropriate organization to choose the lay members assigned to participate as members in the diocesan synod.

— no. 6°: The participation of the rector of the diocesan major seminary was already considered in the *CIC*/1917, in c. 358 § 1,3°, which implicitly—judging from the particle *saltem* placed before *maioris*—foresaw the possibility of summoning the rector of the minor seminary, considering also the practical importance that he had in the life of the diocese, in contrast to what generally happens today notwithstanding the desire expressed by the Code in c. 234 § 1. It was not considered necessary

27. A series of texts related to the essential features of the proper condition of the laity and its implication in the life and mission of the Church is found in G. CORBELLINI, *Il Sinodo...*, cit., pp. 184–187.

28. Also cf. c. 536. For an account of the progress of the pastoral council from the Council to the new Code, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 187–192.

29. Cf., e.g., cc. 443 § 3, 2° and 3°, § 4, 492 § 1, 494 § 1, 537, 835 § 4, 759, 766, 774, 781, 785, 793, 799, 822 § 3, 1435, 1421 § 2.

30. Cf. *Comm.* 24 (1992), p. 225, c. 358 CIC.

in the present Code to speak of the rector of the minor seminary, since he can be summoned by virtue of § 2.[31] The function of the rector of the seminary is, no doubt, among the most necessary and sensitive for the life and pastoral mission of a particular church, especially in regard to its future, since the ministries of the Church are indispensable for their presence among the people and for the exercise of their mission of salvation. It is evident that the rector of the seminary, because of his own ministry, is the most qualified person to bring to the diocesan synod the problem of vocations to the priestly ministry and that of their adequate formation, which the diocesan synod must obviously take seriously. The rector could also be the most appropriate channel to bring to the synod the hopes and dreams of the young seminarians who are prepared to serve as pastors to the particular church meeting in synod.[32]

— no. 7°: Regarding the participation of the vicars forane (archpriests), the new Code is in continuity with the *CIC*/1917, which counted them among the members of the synod in c. 358 § 1,4°. Their function in the organization of the particular church has profoundly changed, when it is remembered that today they preferentially have a mission of promoting and coordinating the pastoral activity of the area (cf. c. 553 § 1). Although their administrative and bureaucratic function has not completely disappeared (cf. c. 555 § 1,2°–3°), this was their principal task in the discipline of the *CIC*/1917 (cf. cc. 447–449). Due to their multiple responsibilities—pastoral, vigilance over disciplinary subjects, liturgical, administrative, spiritual help to the clergy, and attention to their specific problems even in the least easy circumstances of life, visiting the parishes (cf. c. 555)—the archpriests constitute a prolongation of the presence of the bishop, and of his office, in the different parts of the diocese. Through their particular contact with the clergy and other faithful in the specific function of promoting and coordinating pastoral activity, they certainly add a broader vision of the pastoral situation that has matured by their experience. From their knowledge of the pastoral reality from a particular visual angle, they can be a precise echo of the specific situation of the diocese, and can bring a very valuable contribution to the development of the synod. This is the reason they are included among the members by law of the diocesan synod.[33]

— no. 8°: At least one presbyter for each vicariate forane (archpriesthood)—and another who substitutes for him in case of an impediment—is to be chosen by all those who perform care of souls there. They are spoken of here are "presbyters," which is in a certain way an innovation with respect to the *CIC*/1917. Canon 358 § 1,7° of the former Code

31. Cf. *Comm.* 24 (1992), p. 254, c. 4.
32. Other considerations regarding the participation of the rector of the seminary in the diocesan synod can be found in G. CORBELLINI, *Il Sinodo...*, cit., pp. 192–195.
33. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 195–199.

provided that he was to be chosen "unus saltem *parochus* pro unoquoque vicariatu foraneo." Probably the fact that the parish was the typical and almost "exclusive" form for the exercise of the care of souls lead to their being spoken of as "parish priest" and not simply as "presbyters." Therefore, with the new norm, all the presbyterate that exercises care of souls is included, whatever the specific method for doing so (priests entrusted *in solidum* with the parochial ministry, cf. c. 517 § 1; parochial vicars, cf. c. 545; church rectors, cf. c. 556; chaplains, c. 564; etc.). It is also an innovation that the choosing of a substitute is foreseen so as to guarantee in every case the presence of at least one presbyter, from among those who exercise the care of souls, for each vicariate forane. The *CIC*/1917 did not envision that possibility; in contrast, it provided that the parish priest, during his absence, would be substituted for by a substitute vicar (cf. c 358 § 1,7° *CIC*/1917). Certainly the presbyters are amply represented in the diocesan synod through others who are fully entitled to attend the synodal assembly,[34] but the legislator, with this provision, wanted to emphasize with special force their role in the Church, which is developed in immediate contact with the people of God in a frequently humble and hidden but irreplaceable service; a service that, no doubt, does not lack its rewards, but it also has its difficulties, common to all men. They are the presbyters who, as ministers of Christ inserted into continuous contact with the people whose problems, pain, and hopes they share, carry the greatest weight of the very mission of the Church, which is to offer God to men and bring men to God.[35]

— no. 9°: Some superiors of the religious institutes and of the societies of apostolic life that have a house in the diocese. The new provision separates itself notably from that of the *CIC*/1917, not only in terminology, but also in content, especially that referring to the method of choosing. The *CIC*/1917 (cf. c. 358 § 1,8°) envisioned the participation of the *Abbates de regimine* and of superiors of the clerical institutes, designated by the respective provincial superiors.[36] Presently, in effect, the choice of method is left to the diocesan bishop, allowing him to adopt the manner that best corresponds to the specific situation in each particular church. The religious, for their special charisms, though their "status" does not belong to the hierarchy of the Church (cf. c. 207 § 2), constitute an enormous richness because of their spiritual life, as the Council has amply recalled by devoting to them an entire chapter of the Constitution *Lumen gentium* (ch. VI) and the Decree *Perfectae caritatis*. The Council itself wished to recall the special bonding of religious with the particular churches

34. Cf. cc. 463 § 1, 2°–4°, 6°, 7° (and § 2).

35. For a more complete and detailed presentation of the function of priests in the Church and of their service in the care of souls which is essential to their calling to the diocesan synod, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 199–202.

36. For an elaboration of this issue, cf. no. 9°, cf. *Comm.* 24 (1992), p. 226, c. 358 *CIC*; G. CORBELLINI, *Il Sinodo...*, cit., pp. 7–10, 31–37.

(cf. *CD* 34), and afterwards the Holy See dictated specific directives to foster reciprocal relations between bishops and religious in the life of the Church.[37] Regarding their participation in the synod, for centuries there have existed moments of tension because some religious did not want to submit themselves to the obligation of participating in it.[38] Today things have changed quite a bit, and generally religious have good relations with the particular churches in whose territory they live and work. Their right-duty of participating in the synod derives, both from the nature of their life, which constitutes a *peculiare donum* (cf. c. 574 § 2) for the Church, and from their specific service to the Church, which is conveyed in a surprising variety of forms (cf. cc. 577, 673–676). The canon does not specify which superiors are involved—if major or local—but it would seem more logical that those who live in the diocese be summoned, precisely to be able to make a contribution to the synod that also would be the fruit of their thorough knowledge of the human and ecclesial environment in which they work.[39] All that has been said about religious applies as well to the superiors of the societies of apostolic life, at least regarding their connection to the particular church into which they are inserted and regarding their necessary participation in the diocesan synod. These superiors, by committing their members to various works of the apostolate and to living in a community, come close, at least in their external configuration, to the reality proper to the religious institutes. The Instruction *In Constitutione Apostolica* does not give any particular instructions on nos. 1°–4°, 6°–7°, and 9°; and it only gives a list of the members *de iure* (Cf. ICA II, 2) and repeats the text of the canon (Cf. ICA II, 3). On the other hand, it gives some attention to the elective members (nos. 5° and 8°), giving some directions and specifying some aspects (Cf. ICA II, 3, 1° and 2° respectively).

2. Regarding § 2, from the beginning it was proposed that it would have been enough to say that the bishop can also invite other persons, if he considered it opportune.[40] The text was drafted with this suggestion in mind and by providing also that the invited members, unless the bishop provided otherwise in his letter of invitation, have a consultative vote, like the members by law.[41] The drafting was later simplified in passing from the *Schema* of 1977 to the *Schema* of 1980.[42]

37. Cf. *MR*.
38. Cf. G. CORBELLINI, *Il Sinodo...*, cit., p. 202.
39. For a more complete presentation of the nature of religious life, of the bond between the religious and the life of the Church, and the ecclesialogical foundations and expressions of the need to take part in the diocesan synod, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 202–207.
40. Cf. *Comm.* 24 (1992), p. 226, c. 358 CIC.
41. Cf. *Comm.* 24 (1992), p. 255.
42. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 208–209; Appendix, p. 279; also cf. *Comm.* 24 (1992), pp. 263, 284–285, c. 4 § 2.

Because of his ministry and the personal responsibility with which he rules "his" particular church, the bishop is afforded a notable margin of freedom and discretion. In accordance with the celebration of the diocesan synod, the legislator, in continuity with the prior regulations—though the present § 2 is in line with the new sensitivity found in all the Code—has wisely foreseen that the bishop can complete the synodal assembly with other members. It falls to the bishop to assess who, not even counting the enumerated members of § 1, could make a rich and considerable contribution of faith, share experiences derived from the exercise of various functions in the Church and in civil society, and perhaps represent sectors and realities that otherwise would not be represented or insufficiently represented.[43] The text does not expressly speak of the members of societies of apostolic life, but it is evident that the bishop also can summon them to the synod.[44]

3. Paragraph 3 is new with respect to the *CIC*/1917. From the beginning of the work of revision, a paragraph very similar to the present paragraph was introduced, in spite of some having asked for its suppression or, at least, for its modification to prevent abuses. Afterwards, it became the published text[45] with few changes.

Likewise this norm is indicative of the freedom and discretion of the bishop, as well as of the new ecumenical sensitivity recovered by Vatican Council II which had to be conveyed in specific acts. Here the canon deals with ministers or members of the churches or Christian communities that are not in full communion with the Catholic Church. Although it is not specified, it is obvious that it will generally deal with churches and Christian communities present and active in the territory of the diocese—although the contrary is not prohibited. Their members, in effect, substantially share the same situations in life as do members of the Catholic Church (and of the social environment in which they are inserted), in whose welfare they should collaborate in the spirit of a healthy ecumenism (cf. *UR* 12). It is evident that these guests will be present as "observers," not as members, and therefore will not possess a right to participate in the debate nor expressly to contribute to the formation of any platform in the assembly.[46] To this end, it must be emphasized that there has been no recent lack of examples of a more direct implication of separated brethren with synod activities. For example, in the special Synod of bishops for Europe (November–December 1991) they were invited as "fraternal delegates," with a right to participate in the debates. Likewise the regulations of the diocesan synod of Rome, approved by the

43. For other considerations, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 208–209.

44. For some clarifications on the election of these synod members, Cf. ICA, II, 4.

45. Cf. *Comm.* 24 (1992), pp. 254–255; also cf. G. CORBELLINI, *Il Sinodo...*, cit., p. 210, Appendix, p. 280. Also cf. *Comm.* 24 (1992), pp. 253, 285, c. 4 § 3.

46. Other considerations with regard to this material is found in G. CORBELLINI, *Il Sinodo...*, cit., pp. 210–211.

Holy Father in February 1992, contemplated their participation in the same condition of "fraternal delegates." In fact, in the development of the synod concluded on Pentecost 1993, there was participation by fraternal delegates. From these facts one can conclude, at least in our opinion, that, according to the specific circumstances, the diocesan bishop could also contemplate participation in that form by providing an exception to c. 463 § 3. It would be a matter of particular delicacy toward separated brethren whose presence would pose no problem, keeping in mind also the purely consultative and extraordinary nature of the diocesan synod.[47]

47. For some clarification on the purpose of the presence of these observers, and on the criteria for their election, cfr ICA, II, 6.

464 **Synodo sodalis, si legitimo detineatur impedimento, non potest mittere procuratorem qui ipsius nomine eidem intersit; Episcopum vero dioecesanum de hoc impedimento certiorem faciat.**

A member of the synod who is lawfully impeded from attending, cannot send a proxy to attend in his or her place, but is to notify the diocesan Bishop of the reason for not attending.

SOURCES: c. 359 § 1

CROSS REFERENCES: cc. 461–463

COMMENTARY

Giorgio Corbellini

The source for c. 464 is c. 359 § 1 of the *CIC*/1917, whose preservation was considered necessary from the beginning. It was, however, immediately necessary to suppress § 2 of that same canon.[1] In effect, the provision that the bishop can punish one who neglects a duty so important could seem hardly congruent with present sensibility. Without denying the validity and perhaps the need for coercive measures, it must be remembered that they are not the most appropriate ways to involve people in a time of constructive communion such as the diocesan synod. Moreover, today participation is perceived more as a right than a duty, and therefore a coercive provision would be completely superfluous.

The regulations of c. 464 have their internal logic based on the nature of the diocesan synod, which is a purely consultative organization. It would thus be completely out of place for an absent member to be replaced by a proxy. In contrast, it is necessary that one who is lawfully impeded notify the bishop, who is the president of the synod (cf. c. 462 § 2), of the impossibility of taking part in the celebration. These provisions find their justification in the consultative nature of the synod, as we have just said, but especially in the fact that no one can excuse himself from a duty that obligates him. On the other hand, a personal contribution is expected from the members of the synod, whether by law (cf. c. 463 § 1) or by episcopal designation (cf. c. 463 § 2), which cannot be made except by them personally. The synodal assembly, besides being a place in which decisions mature by means of the exchange of opinions and the contribution

1. Cf. *Comm.* 24 (1992), p. 226, c. 359 *CIC*; also cf. pp. 255, 263, 285, c. 5.

of the members, is also a time of communion within a specific particular church, to which it is necessary to bring the contribution of one's own thought and life experience. If a lawful impediment makes it impossible for a member to constructively participate in the synod, it is necessary that the bishop be personally and promptly informed of it. In effect, it is only fair that the bishop know that he will be missing a necessary contributor (or at least one that is desired). In that way, the bishop will be able to replace that deficiency by summoning another person who can—if and to the extent possible—offer an equally valuable contribution.[2]

By invoking the content of this canon, the Instruction *In Constitutione Apostolica* also reminds us of the bishop's power to remove, by decree, any synod member expressing opinions contrary to or outside of the Church doctrine, or rejecting episcopal authority, always except for the right to appeal the decree (Cf. ICA II, 5).

2. For further considerations, cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), pp. 211–213.

465 Propositae quaestiones omnes liberae sodalium disceptationi in synodi sessionibus subiciantur.

All questions proposed are to be subject to the free discussion of the members in the sessions of the synod.

SOURCES: c. 361; *DPMB* 165

CROSS REFERENCES: —

COMMENTARY

Giorgio Corbellini

Canon 465 has its source in c. 361 of the *CIC*/1917, which, from the beginning, was considered necessary to be preserved in its original form.[1] Afterward it experienced a drafting modification, which simplified it, but preserved its substance unchanged.[2] Although a canon had been drafted following the outlines of c. 360 of the *CIC*/1917[3] relative to the manner of preparation for the synod (which was present until the *Schema* of 1980), it was finally suppressed. The reason was that it seemed more opportune to leave the bishop at liberty to decide the manner of preparation for the synod through provisions that would have to be made in the regulations.[4] In effect, a simpler formulation had been initially drafted from c. 360 § 1 and a slight change was made for § 2;[5] the text was drafted afterwards in the sess. XI.[6] In the *Schema* of 1977 it appeared as c. 275 and in the *Schema* of 1980 as c. 384, but it no longer appeared in the *Schema* of 1982.[7] This does not diminish the fact that preparation for a diocesan synod constitutes, in a certain sense, the most important work to guarantee the success of its celebration.[8]

The present canon does not present special problems, since it simply contains a very obvious and general norm relative to the necessary free-

1. Cf. *Comm.* 24 (1992), p. 226, c. 361 CIC.
2. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), p. 109; also cf. *Comm.* 24 (1992), pp. 225, 264, 285, c. 7.
3. Cf. *Schema* of 1977 and *Schema CIC* 1980 (respectively, c. 275 and c. 384), in G. CORBELLINI, *Il Sinodo...*, cit., Appendix, p. 280.
4. Cf. *Comm.* 14 (1982), p. 211, c. 384.
5. Cf. *Comm.* 24 (1992), p. 226, c. 360 *CIC*.
6. Cf. *Comm.* 24 (1992), p. 256, c. 6; also cf. pp. 263, 285, c. 6.
7. Cf. G. CORBELLINI, *Il Sinodo...*, cit., Appendix, p. 280.
8. Regarding the importance and absolute necessity of a proper preparation, both spiritual and practical, cf., G. CORBELLINI, *Il Sinodo...*, cit., pp. 94–104.

dom with which the different issues must be made subject to the discussion of the participants in the synod. The nature of the synod itself requires this freedom: it would not make sense to convene an assembly at which one was not allowed to express one's own opinion with due regard for its consultative nature. The opinions expressed will be subject to voting, keeping in mind the norms stated in c. 119,2° (although they do not possess a strictly collegial nature) unless the regulations have provided otherwise. Also regarding the elections that have to be carried out in the context of the synod: they must follow the norms contained in cc. 119,1° and 165–179, except the various provisions that could be contained in the regulations. Although c. 119 refers to collegial acts, it constitutes a necessary point of reference for all the voting in ecclesial organizations. As much as the synod might be a consultative organization, the voting can allow the bishop to know what—and with what numerical weight—the orientation is that prevails in the assembly regarding various matters. This will allow him to form an exact opinion with a view toward promulgating the decrees and publishing the synodal declarations, tasks that are his responsibility alone (cf. c. 466).[9] In any case, the freedom in the debates regarding proposed issues constituted a fundamental need, but left to the regulations the determinations dealing with the manner of their development. These regulations are an indispensable instrument to make the synod an experience truly constructive in the life of the particular church.

It is well known that the appropriate liturgical celebrations cannot be lacking in the development of the synod, which make clear its essentially ecclesial nature and therefore the religious nature of the assembly.[10] But the norms of the *CIC* regarding the synod do not deal with this aspect of synodal activity since there is no need for a strictly juridical regulation of the liturgical celebrations that must accompany it. Generally, they will be celebrations open to all the faithful of the diocese and not reserved to the members of the synod.[11]

9. For other considerations, cf. G. CORBELLINI, *Il Sinodo*..., cit., pp. 111–116.

10. Cf. *DPMB*, 165; G. CORBELLINI, *Il Sinodo*..., cit., pp. 109–110.

11. For the scope in which a synod may act and for the subjects that it may lawfully and effectively handle, Cf. ICA, appendix. Within the context of this canon, due to its practical nature, it may be useful to also bear in mind what is indicated in its regulations (Cf. ICA, III, B) and on the development of the synod (Cf. ICA, IV).

466 **Unus in synodo dioecesana legislator est Episcopus dioecesanus, aliis synodi sodalibus voto tantummodo consultivo gaudentibus unus ipse synodalibus declarationibus et decretis subscribit, quae eius auctoritate tantum publici iuris fieri possunt.**

The diocesan Bishop is the sole legislator in the diocesan synod. Other members of the synod have only a consultative vote. The diocesan Bishop alone signs the synodal declarations and decrees, and only by his authority may these be published.

SOURCES: c. 362; *LG* 27; *CD* 8

CROSS REFERENCES: —

COMMENTARY

Giorgio Corbellini

This canon[1] has its source in c. 362 of the *CIC*/1917, which was considered necessary from the beginning in order to preserve it in its original form.[2]

From the final disposition of c. 362 of the *CIC*/1917 regarding the effective dates of the decisions adopted by the bishop in the synod *(synodales constitutiones)*, an independent canon was initially drafted.[3] That canon appeared as c. 278 in the *Schema* of 1977,[4] but was suppressed during the revision of that *Schema* because it constituted a repetition of the provisions of c. 9 § 3 of the *Schema De normis generalibus* (the present c. 8 § 2).[5]

Historically there have been cases—among them, that of the former Synod of Auxerre in Gaul, at the end of the sixth century—in which the

1. Regarding c. 466, also cf. E. ZANETTI, "Commento ad un canone: 'Nel Sinodo l'unico legislatore è il Vescovo diocesano...' (c. 466)," in *Quaderni di Diritto Ecclesiale*, 4 (1991, pp. 63–68).
2. Cf. *Comm.* 24 (1992), p. 226, c. 362 CIC.
3. Cf. *Comm.* 24 (1992), p. 256, c. 9; also cf. pp. 266, 285, c. 9 and *Comm.* 25 (1993), p. 74, c.
4. Cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), Appendix, p. 281.
5. Cf. *Comm.* 12 (1980), p. 318. For the remaining passages on the formation of c. 466, cf. G. CORBELLINI, *Il Sinodo...*, cit., p. 150; also cf. *Comm.* 24 (1992), pp. 256, 264, 266, 285, c. 8; *Comm.* 25 (1993), p. 74, c.

synodal decisions were signed by all the participants. For centuries the matter presented no difficulty; but problems began to appear after the Council of Trent. Likewise, there were positions taken by the Holy See that seemed to leave open the possibility that the decisions receive the approval of the members of the synod, although that approval was not considered essential. The problem got worse with the Synod of Pistoia, in 1786, which situated the bishop and the parish priests on the same plane regarding the reformatory decision that had to be adopted in the context of the diocesan synod. The intended parity, together with many other decisions of the Synod of Pistoia, was expressly condemned by Pope Pius VI, in the Bull *Auctorem fidei*, of August 28, 1794.[6] In the *schemata* drafted with a view toward Vatican Council I, the affirmation that only the bishop is the legislator and judge in the synod was found for the first time; and although the bishop might ask for the opinion of those present, he is not at all obliged to follow it.[7] The principle, contained in the *schemata* of Vatican Council I, which never came to be discussed because of the forced interruption of the Council, became a universal law in the Latin Church with c. 362 of the *CIC*/1917—which has passed almost literally into the new *CIC*—and ended all the preceding discussions on the question.

It is the indisputable prerogative of the *auctoritas et sacra potestas* of which the bishops are endowed to govern the particular churches entrusted to them as vicars and legates of Christ, an authority they enjoy in the name of Christ (cf. *LG* 27). They make laws and issue disciplinary decrees for the governance of their church by their own authority, without the concurrence of other members of the particular church. The *CIC* provides unequivocally that the legislative power is exercised only by the bishop (cf. c. 391 § 2), keeping in mind that, of itself, the legislative power that the Church's legislators inferior to the Roman Pontiff have—and therefore also the diocesan bishops—cannot be lawfully delegated. The bishop cannot renounce the personal exercise of legislative power, which is tied to his specific function at the head of a specific particular church. He cannot delegate it to others, or hide himself behind the responsibility of the synod or confuse himself with it by renouncing a strictly personal function. He does have the right of finding in the synod all the help and collaboration necessary so that the exercise of his personal power is realized in a manner truly faithful to the Gospel and the specific situations of his particular church.[8] The consultative nature of the synod and the personal responsibility of the bishop, also regarding the authentic teaching of the faith and the normative decisions, do not relieve the bishop from respectfully assessing the proposals arising from the synodal assembly to give them binding effect. Certainly, he has the right to ignore them, in part or entirely, but to do so he must have very grave reasons, since it would be

6. Cf. Dz.-Sch., 2600–2700, in particular 2609.
7. For an illustration of the problem, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 151–153.
8. For other useful considerations, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 153–155.

hardly prudent not to keep in mind what the synod has developed and decided, generally after much fundamental consultation and deep study by the members of the synodal assembly. Among other things, when the *CIC* establishes in c. 127 the dispositions regarding the consultation that the superior needs to have for certain acts, after having recalled that he is not obliged to proceed according to the opinions given (although he might agree), urges him not to separate himself from the synod (especially if he agrees) without a reason, in his view, that prevails over the adduced dispositions.[9]

Canon 466 also provides that only the bishop has to sign the declarations and the synodal decrees. This, of course, is a logical and natural consequence of the fact that the bishop is the only legislator in the synod.

"Declarations" here means those acts that possess a content not directly normative, but rather doctrinal or, in general, guiding; the term "decrees" means the acts that contain precise decisions of a juridical nature, which are required to become a norm of action in that particular church.[10]

The signing by the bishop is the act through which the texts that are developed in the synod, and in some cases, revised afterwards by the bishop, acquire juridical effect or become binding for the particular church.

Finally, the canon establishes that the declaration and the synodal decrees can be published—that is, made known to the particular church, so that they be properly put into practice—only on the bishop's authority. Publication presupposes "promulgation," that is, the juridical act with which the legislator wants to give binding effect to a certain text, doctrinal or strictly juridical: in this case it is clear that promulgation consists of his signature, as a testimony to the will to give the document binding effect.[11]

Nowhere in the *CIC*—and it is understood always as a problem foreign to the synod—is the application of the decisions (declarations or decrees) of the bishop spoken of, which were adopted after their development in the synod, which was celebrated precisely to develop measures that must guide the life of a particular church. In any case, it is not precluded that the synodal decrees themselves can establish methods for the application of the dispositions. No doubt appropriate preparation is fundamental for the success of the synod, which involves the largest possible number of people. An ordered development is important, which is participative and fruitful of the sessions, but it is essential to put into practice what the bishop, from the results of the synod, has decided the norm of

9. For further considerations, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 156–158.
10. For a more detailed illustration, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 158–161.
11. Cf. c. 7; also cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 161–162; 116–118.

life for his particular church will be. The celebration of a synod, with all its preparation and development, would be a useless and frustrating effort if there were lacking in the particular church the effort of all those responsible at all levels, and likewise the faithful themselves, since it depends on them to put into practice the orientations and decisions promulgated by the bishop at the end of the synod.[12]

12. For other considerations regarding putting into practice the declarations and decrees of the synod, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 118–120. For some useful intructions regarding the ways to practice what is laid out in this canon, cf. ICA, IV, 1–4 and 6.

467 **Episcopus dioecesanus textus declarationum ac decretorum synodalium communicet cum Metropolita necnon cum Episcoporum conferentia.**

The diocesan Bishop is to communicate the text of the declarations and decrees of the synod to the Metropolitan and to the Bishops' conference.

SOURCES: —

CROSS REFERENCES: cc. 431–432, 435–436, 447–448, 455, 461, 462

COMMENTARY

Giorgio Corbellini

A canon analogous to this one did not exist in the *CIC*/1917. Nevertheless, from the beginning of the work of revision of the Code it was considered necessary to draft another canon that would establish that the decrees, declarations, etc., of the diocesan synod must obtain the approval of the Holy See.[1] During the drafting process of the canon a proposal was made that the bishop notify the Apostolic See and the regional Bishops' Conference of the text of the synodal declarations and decrees. In light of an objection that the Holy See and Bishops' Conference should not be put on the same level since the reason of notification is different in each case, the text was drafted differently, likewise keeping in mind the suggestion of including the metropolitan among the bodies that had to be notified of the synodal acts.[2]

The prescription of sending the texts of the synodal declarations and decrees to the metropolitan and Bishops' Conference is based on the relationship existing between each one of the particular churches and the ecclesiastical provinces, as well as between them and the Bishops' Conference. There are different methods by which the relations were realized between the various particular churches existing in bordering territories. While the ecclesiastical provinces are a very old fact, the Bishops' Conferences have a brief history.[3]

1. Cf. *Comm.* 24 (1992), p. 226, *novus canon.*
2. Cf. *Comm.* 24 (1992), p. 257, c. 10 (*novus*). For other information,—especially regarding the elimination of the need to send synodal texts to the Holy See—cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), pp. 224–225; also cf. *Comm.* 14 (1982), p. 212; for the process of information, also cf. *Comm.* 24 (1992), pp. 264, 286, c. 10.
3. Cf. G. CORBELLINI, *Il Sinodo...*, cit., respectively, pp. 250–253 and 231–234.

Since the end of the ecclesiastical province is to promote a common pastoral action for the various neighboring dioceses (cf. c. 431 § 1) and that of the synod is to realize the welfare of the entire diocesan community (cf. c. 460), it is logical that the fruit of vast synodal effort be shared with he who presides over the ecclesiastical province (cf. c. 435), namely, the metropolitan. Through him, the synodal decisions could in some way constitute a contribution to the spiritual welfare of all the other particular churches in the province. Also, because by putting the fruit of the work itself at the disposition of others it could be used by or constitute for them a stimulus for a similar undertaking, it is a particularly effective pastoral collaboration.

Moreover, considering that the synod is for each particular church an occasion of making current its own ecclesiastic discipline, over whose faithful observance the metropolitan must keep watch (cf. c. 436 § 1,1°), he has a right to know how the legislation of a certain particular church was arrived at in the synod and, likewise, to carry out by this act his duty of vigilance.[4]

Regarding the duty of the bishop to send the text of the synodal declaration and decrees to the Bishops' Conference, it must be observed that the synod and the Conference are two very different organizations, but that they coincide in the purpose of looking out for, respectively, the welfare of every diocesan community (the synod: cf. c. 460) and of the faithful present in the wider territory, normally coinciding with a country (the Bishops' Conference: cf. cc. 447 and 448 § 1). All the particular churches existing within the limits of the same territory can benefit from the road taken by those particular churches that have celebrated a diocesan synod. Moreover, as the synod cannot ignore the directives given by the Bishops' Conference (whether they be merely guiding or binding), sending the synodal declarations and decrees to the Bishops' Conference can also constitute a premise for a type of control by the competent organizations of the Conference of their agreement with those pastoral orientations.

On the other hand, given the legislative competence both of diocesan synod (cf. c. 466)—though it might not be the synod as such that has legislative power, but the bishop who gives, in the proper case, the texts produced by the synod and revised by him binding normative effect (cf. c. 466)—and of the Bishops' Conference (cf. c. 455 §§ 1–2), institutions from which one competence lives, in a certain way, in the context of the other, it turns out to be beneficial that the regulations produced by a particular church be known also by the other sister churches, which can constitute a form more of fraternity and collaboration. That sending especially derives from an exigency of control for uniformity in the synodal decrees with the normative decisions of the Bishops' Conference on the

4. Cf. G. CORBELLINI, *Il Sinodo...*, cit., p. 231.

subjects of its competence (cf. c.455 §§ 1–2). The possible conflicts between the synodal norms and the norms issued with a binding character by the Bishops' Conference should be eliminated on penalty of invalidity (cf. c. 135 § 2).[5]

So, although the synod is an act typical of a particular church (cf. cc. 460 and 461 § 1) or, in special circumstances, of more than one (cf. c. 461 § 1), at the heart of the disposition of this canon is found a recovered spirit of communion, especially among sister churches existing within the same territorial limits, keeping in mind the reasons of a juridical and practical nature stated above. It is also a way of putting the resources and positive ecclesial experiences[6] of one at the service of the other, in a genuine spirit of *communio* among the particular churches in the heart of the universal Church, which must be conveyed also in specific acts *(communio effectiva)*, and not be perceived only as a spiritual bond or strength *(communio affectiva)*.

It is necessary to transfer a copy of the synodal documentation, through the pontifical representative, to the Congregation for Bishops or to the Congregation for the Evangelization of Peoples for them to be apprised as necessary (Cf. ICA, V, 5).

5. Cf. ibid., pp. 235–236.
6. Cf. ibid., pp. 236–237.

468 **§ 1. Episcopo dioecesano competit pro suo prudenti iudicio synodum dioecesanam suspendere necnon dissolvere.**

§ 2. Vacante vel impedita sede episcopali, synodus dioecesana ipso iure intermittitur, donec Episcopus dioecesanus, qui succedit, ipsam continuari decreverit aut eandem extinctam declaraverit.

§ 1. If he judges it prudent, the diocesan Bishop can suspend or dissolve the diocesan synod.

§ 2. Should the episcopal see become vacant or impeded, the diocesan synod is by virtue of the law itself suspended, until such time as the diocesan Bishop who succeeds to the see decrees that it be continued or declares it terminated.

SOURCES: § 1: cc. 222 § 1, 357 § 1
§ 2: c. 229

CROSS REFERENCES: cc. 461, 462

COMMENTARY

Giorgio Corbellini

The drafting of this canon, which has no analogous norm as an antecedent in the *CIC*/1917, was done at the request of two consultors, who considered it necessary to issue a norm regarding the suspension of the synod in case of the bishop's death or transfer to another see, as well as regarding the right of the bishop to suspend the synod.[1]

Paragraph 1 contemplates two possible acts of the bishop with respect to the synod—suspension and dissolution—of very different natures, although their immediate effect might be the same. Nevertheless, by its nature, suspension has a temporary effect, while the effect of dissolution is final.[2] The bishop can decide to suspend or dissolve the synod not only during the actual time of its celebration, but at any point in its preparation. These decisions are within his exclusive competence—*pro suo*

1. Cf. *Comm.* 24 (1992), p. 257, c. 11 (*novus*). For remarks regarding the successive steps taken in working out this issue, cf. G. CORBELLINI, *Il Sinodo diocesano nel nuovo Codex Iuris Canonici* (Rome 1986), pp. 136–142; also cf. *Comm.* 24 (1992), pp. 264, 286, c. 11.

2. For a more complete presentation of the two juridical acts, cf. G. CORBELLINI, *Il Sinodo*..., cit., pp. 136–139.

prudenti iudicio—and in doing so he is not obliged to heed any consultative organ, in contrast to the convening of the synod (cf. c. 461).

In case of suspension, when there are conditions present favorable to the synod's resumption, only the bishop, as originator of its being convened and president of the synod (cf. c. 462), can assess if and when it can be resumed.

In contrast, when the dissolution of the synod has been decreed, it is clear that it cannot be resumed. If the circumstances change, the bishop could possibly decide to convene a new synod—always keeping in mind c. 461 § 1—but it will be a different ecclesial event from the prior one.

There is no doubt at all that it is the bishop's competence—not only pursuant to the Code, but as well *ex natura rei*, keeping in mind the personal authority of the bishop in his particular church which is conveyed also in the fact that only he convenes and presides over it (cf. c. 462)—both in suspending and dissolving the synod in any stage of its preparation or celebration. To proceed to one of these decisions, the bishop should have a cause proportional to an act that will not soon stop having notable repercussions in the life of the particular church. The fundamental cause that can induce a bishop to suspend the synod is the discovery that it is not following its essential purpose of looking after and promoting the genuine welfare of the entire diocesan community (cf. c. 460). Instead of being a time of constructive communion, it has become an occasion of sterile arguments, or embarrassing confrontations, which divide and wound ecclesial communion, a danger not completely hypothetical, which was noted also by a member of the commission for the revision of the *CIC*.[3] Likewise other causes, completely foreign to the running of the synod, but which can affect its development (political or natural events, etc.) could lead a bishop to decree the suspension or dissolution of a synod.[4]

Paragraph 2 contemplates the suspension *ipso iure* of the synod when the episcopal see is impeded (cf. cc. 412–415) or vacant (cf. cc. 416–430).[5]

These are two very different situations regarding their causes, but very similar, if not identical, in their practical effects, in the sense that both involve the absence of the diocesan bishop at the vertex of the pastoral governance of the diocese, though the methods foreseen to replace him are different.

Their effect is also identical regarding the diocesan synod in the course of its celebration, or at least of its preparation: both cases produce

3. Cf. *Comm.* 14 (1982), p. 209, cc. 379–388.
4. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 141–142.
5. For more detailed explanations regarding the two hypotheses under consideration, cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 143–144.

a suspension *ipso iure*. It is a logical and prudent disposition since the synod can no longer exist without the bishop. The immediate suspension of the synod is provided for by law as a necessary effect of another possible fact—the situation of the see's being impeded or vacant—which constitutes, in a certain way, if not its cause, at least the *conditio sine qua non*.

This is one of the numerous cases contemplated in the *CIC* of conditions established as necessary, by virtue of the law itself, consequent to certain verified facts or occurrences, or other situations that are created simply by the will of the law itself. Otherwise, in other cases the law leaves the opportune decision to the competent authority.[6] Bearing in mind the diocesan nature of the synod, the provision for its suspension *ipso iure* on the occurrence of the see's being impeded or vacant is the most prudent since it could not be suspended by the authority that has convened it or must preside over it. Or, if he is already presiding over it, the suspension either occurs for obvious reasons (precisely because the see is impeded or vacant the suspension occurs *ipso iure*) or by an inferior authority since the bishop is the only one responsible for the synod, and it is not appropriate out of respect for the wholesome autonomy of the particular churches, to confer this attribution on the metropolitan or the Holy See.

The successor bishop[7] will decide whether to continue the synod or to declare it over. Although it is not expressly established, it would seem opportune that the bishop, especially when it is matter of the suspension for the see's being vacant, before deciding to resume the synod, hear the opinion of the presbyteral council, by analogy to the provisions regarding its being convened (cf. c. 461 § 1). In contrast, that consultation does not seem necessary to declare the diocesan synod concluded, and this by analogy to the provisions for suspension or dissolution (cf. c. 468 § 1).

In any case, it is clear that the bishop *qui succedit* has the right to decide, in a reasonable amount of time, so that the matter not remain without an explicit definition. In effect, it would be imprudent not to define the situation: it would have many negative repercussions regarding public opinion within and without the Church and would constitute a lack of a sense of pastoral responsibility.[8]

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6. Cf. G. CORBELLINI, *Il Sinodo...*, cit., p. 145, notes 85 and 86.
7. By this expression one should perhaps also understand the bishop who is freed from an impediment: cf., in any case, G. CORBELLINI, *Il Sinodo...*, cit., p. 146, note 92.
8. Cf. G. CORBELLINI, *Il Sinodo...*, cit., pp. 144–148; also cf. pp. 148–150, regarding the scope of the expressions "decreverit" and "declaraverit."

CAPUT II
De curia dioecesana

CHAPTER II
The Diocesan Curia

469 **Curia dioecesana constat illis institutis et personis, quae Episcopo operam praestant in regimine universae dioecesis, praesertim in actione pastorali dirigenda, in administratione dioecesis curanda, necnon in potestate iudiciali exercenda.**

The diocesan curia is composed of those institutes and persons who assist the Bishop in governing the entire diocese, especially in directing pastoral action, in providing for the administration of the diocese, and in exercising judicial power.

SOURCES: c. 363 § 1; *CD* 27; *DPMB* 200

CROSS REFERENCES: cc. 134, 391, 406, 472, 475–495

COMMENTARY

Antonio Viana

1. The term "curia," of an uncertain etymology, has been applied in law with various meanings; among those included are administrative action (*curare*) and also the meeting place for the administrators.[1]

In the context of canonical codification in the twentieth century, the term is employed to designate as a whole those people and institutions that stably and immediately collaborate with the Roman Pontiff (Roman curia) or with the diocesan bishop (diocesan curia) in various activities,

1. Cf. A. ORMANNI, "Curia, curiali," in *Novissimo Digesto Italiano* V (1960), cols. 56–68; E. GRAZIANI, "Curia diocesana, art. " in *Enciclopedia del Diritto* XI (1962), col. 544.

and more specifically in the activity of governance understood in the broad sense.

2. There are two aspects of the diocesan curia emphasized by c. 469: in the first place, its composition; in the second, its purpose and scope of action.

a) Canon 469 states that the curia consists of *institutis et personis*. This formulation is an innovation with respect to c. 363 of the *CIC*/1917, which conceived of the curia as a whole of persons that aid the bishop in the governance of the entire diocese. Canon 363 § 1 *CIC*/1917 itself enumerated those collaborators "vicar general, provisor, prosecutor, chancellor, defender of the bond, synodal judges and examiners, priest consultors, auditors, notaries, cursors, and bailiffs."

The present canon reinforces the institutional meaning of the curia by conceiving of it as a personal and organic complex, a group of collaborators and institutions at the service of the bishop and of the entire diocese. Through the curia the governance of the diocese is stably directed, overcoming the problem of succession of individual people when the bishop does not exercise governance personally. Therefore the curia has an *official* dimension that must promote the responsibility of the people who work in it and a particular sensitivity toward the intended recipients of the various acts. This special relationship of the curia with the faithful of the diocese demonstrates that its purpose is broader than as an aid to the person of the bishop. Thus it also shows that both in the *CIC* and before Vatican Council II (in *CD* 27) the denomination "diocesan curia" was preferred ahead of others that only implied personal help to the bishop (as, for example, the denominations of "episcopal curia").[2]

In the context of the norms of the *CIC*/1917 it was a controverted question whether the diocesan curia constituted a *universitas* endowed of juridical personality.[3] Some authors specifically cited c. 1572 § 2 to justify an affirmative opinion. This canon, in the context of the determination of the judge of first instance, distinguished between the controversies relative to rights or temporal goods of the bishop and those corresponding to the diocesan curia. This norm has not been textually incorporated into the *CIC* (cf. c. 1419 § 2), which moreover expressly recognizes in c. 373 juridical personality of lawfully established dioceses. Presently, therefore, the juridical personality of the diocesan curia cannot be justified independently of diocesan subjectivity, though naturally the possibility is always

2. Cf. F.R. AZNAR, "La nueva concepción global de la curia diocesana en el Concilio Vaticano II," in *Revista Española de Derecho Canónico* 36 (1980), p. 442.

3. For a positive view of this notion, cf. P.A. D'AVACK, "Curia diocesana," in *Novissimo Digesto Italiano* V (1960), col. 69, and for the opposing view, cf. E. EICHMANN-K. MÖRSDORF, *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici*, I, 11th ed. (Paderborn 1964), pp. 426 and 427.

open that the bishop would grant[4] it for practical reasons, keeping in mind especially the economic reality of the diocese and the dispositions of the state authorities.

The universal law no longer enumerates the people and institutions that belong to the curia. Some authors[5] employ a distinction between curia in the broad sense and in the strict sense. In the broad sense the institutions that make up the consultative bodies of the diocese would belong in some way to the curia (thus, the presbyteral council, the college of consultors, the chapter, the pastoral council), by virtue of their participation in pastoral management and diocesan governance. In the strict sense only the offices and persons enumerated in the chapter that introduces c. 469 would make up the curia, that is, the vicars general and episcopal vicars, the moderator of the curia, the episcopal council, the chancellor, the vice chancellor, and other notaries, the council for economic affairs, the finance officer and likewise the offices related to the administration of justice in the diocese, principally the judicial vicar and his assistants.

It is important to emphasize here the facultative character of some of the enumerated offices and the importance of the particular law on this subject (see introduction to this tit. III). In effect, besides the consultative organization of the dioceses being different according to how all the colleges contemplated by the universal law are constituted, likewise all the offices strictly likened to the curia are always of a preceptive constitution. They are only the vicar general (c. 475 § 1), the chancellor (c. 482 § 1), the council on financial affairs (c. 492 § 1), the finance officer (c. 494 § 1), the judicial vicar (an office that can even be performed by the vicar general: c. 1420 § 1), the promoter of justice (c. 1430), and the defender of the bond (c. 1432).

The variety is, therefore, a characteristic proper to the diocesan curias since they are organic complexes. The importance of the particular law in this entire subject allows the organization of the curia to adapt itself to the needs of the diocese and also to the style of governance of the bishop himself, whom the curia also serves. Depending on the number of cases or causes that must be handled and the extent and population of the diocese, there will be curias with a simple organization and others with a greater structure. The style of episcopal governance will also bear on the conception of the curia, depending on the greater or lesser personal devotion of the bishop to the ordinary governance of the diocese and the centralization of the official diocesan action in the curia or its decentralization in favor of other offices.

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4. Cf. the commentary of A. SOUSA COSTA, in *Commento al Codice di Diritto Canonico*, a cura di Mons. P.V. Pinto (Rome 1985), p. 274.

5. Cf. the commentary of J.I. ARRIETA, in *Pamplona Com*, p. 331; G. GIULIANI, *I canoni generali sulla curia diocesana* (Rome 1988), p. 45.

The departmental system is in effect in many dioceses, depending on what administrative activities of the diocesan curia are given to what offices and sections that differ according to the subject matter: catechesis, liturgy, holy art, social action, cleric, missions, instruction, pastoral specialty, mass media, ecumenism, economy, historical-artistic patrimony, etc. At the head of each department is one who relies directly on the bishop, or else on one of his vicars. Together with this functional or material distribution it must be stated that ordinarily the competence of the various offices of the curia is general, in the sense that it extends to all the faithful of the diocese and to all its territory, naturally within the limits marked by the universal law and the particular law for each office. Nevertheless, some offices of the curia can have their competence circumscribed to a determined area of the diocese or to certain of the faithful. (This happens, for example, with the territorial or personal episcopal vicars: cf. c. 476, and in general with all the offices of the curia that act at the service of specific groups of faithful.) In sum, the competence of the diocesan curia is specifically diversified into functional ranges, territorial ranges, and specific personal ranges.

b) Pursuant to the text of c. 469 the purpose of the curia is to collaborate with the bishop in diocesan governance. As we previously pointed out, they can be distinguished, but not completely separated from, service to the bishop and service to the diocese itself as two aspects of the action that the curia is intended to carry out.

The reference of the canon to the governance of every diocese has to be understood in the broad sense. It is important to distinguish in the dynamism of the curia between acts of governance and acts of power. A basis for this distinction is constituted by *Lumen gentium* 27 when it states that "[t]he bishops, as vicars and legates of Christ, govern the particular churches assigned to them by their counsels, exhortations and example, but over and above that also by the authority and sacred power." That is to say, within the *munus regendi* that the bishop actuates in the diocese by virtue of sacramental consecration and the canonical mission, is included both its general management by means of the council or exhortation as well as the canonically binding mandate.

Under the first aspect, the canon states that the collaboration of the curia in episcopal governance refers also to the "directing of pastoral action" in the diocese (*in actione pastorali dirigenda*) when it is not personally exercised by the bishop. The adjective *pastoral* does not refer here obviously to the action of the holy ministers in the diocese, or likewise only to the care of souls. The fact that the action of the curia is broader than the organization of the ministerial functions as well as the fact that the universal law does not link ownership of all the offices to holy orders excludes this interpretation (cf. e.g., cc. 483 § 2, 494, 1421 § 2, besides other offices that can be constituted by particular law and entrusted to faithful not ordained *in sacris*). The term alludes rather to the

"exercise of works of the apostolate" (*CD* 27) in the diocese. This was an aspect of the action of the curia especially emphasized during the celebration of Vatican Council II, in the sense of conceiving it (cf. *CD* 27) as a genuine motor in the diocese of all the action relative to the care of souls, instruction, charitable and social action, liturgy, ecumenism, the missions, etc. During the Council and the following period there was no lack of voices alert to the danger of bureaucratizing the curias[6] in the sense of giving priority to strictly administrative tasks instead of promoting the diocesan apostolate that is intended to develop and is also a task of governance, though not necessarily one of power. The means of avoiding the danger of curial bureaucratization are various, and range from the simplification of the organizations themselves up to the exercise of certain tasks by curial clerics related to preaching and administration of sacraments, in line with that provided by some exponent of postconciliar legislation (cf. *DPMB* 200).[7]

3. In light of this pastoral importance of the curia in the sense indicated, it is easy to conclude that not all of its action of governance is manifested through juridical acts of power that canonically link the conduct of the faithful to whom it is directed. It can even be said that such binding determinations might not constitute the largest part of governance exercises by the curia. But, at the same time, the canonical capacity of the curia to exercise power through several of its offices must also be established. It is fitting to remember in this sense that the diocese can incorporate various offices that, together with the diocesan bishop, have the canonical consideration of "ordinaries" and "local ordinaries" (cf. c. 134 §§ 1 and 2). The competence of legislative governance—which corresponds personally to the bishop (c. 391 § 2)—and the administrative acts expressly entrusted to the bishop are excluded from the competence of the curia. In these cases it is appropriate, nevertheless, that the law expressly provide otherwise (cf. c. 135 § 2), or else that the bishop himself delegate his administrative power by means of a special mandate (cf. c. 134 § 3). Likewise, administrative and judicial action that transcends the diocesan borders is naturally excluded from the juridical competence of the curia.

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6. Cf., for example, J. Sánchez y Sánchez, "La nueva curia diocesana," in *"Lex Ecclesiae". Estudios en honor del Dr. Marcelino Cabreros de Anta* (Salamanca 1972), pp. 311–336.

7. Cf. SCB, "Directorium "Ecclesiae Imago" de pastorali ministerio Episcoporum," February 22, 1973, no. 200, in *Enchiridion Vaticanum*, IV, 10th ed. (Bologna 1978), pp. 1226–1487.

470 Nominatio eorum, qui officia in curia dioecesana exercent, spectat ad Episcopum dioecesanum.

The appointment of those who fulfill an office in the diocesan curia belongs to the diocesan Bishop.

SOURCES: cc. 152, 364 § 1; *DPMB* 200

CROSS REFERENCES: c. 157

COMMENTARY

Antonio Viana

1. Canons 146–183 contain the general norms regarding the various procedures to fill ecclesiastical offices: free conferral, presentation, election, and postulation. Standing out among them is the system of free conferral because of its general and even supplementary character, in the sense that it is the applicable procedure for the appointment of offices that do not have another expressly stated procedure and likewise for cases in which the system initially provided (cf. cc. 162 and 165) has turned out to be ineffective. The most important characteristic of free canonical conferral of an office is that the competent authority does not become bound by a procedure prior to designations, as it happens, in contrast, in the confirmation of a prior election (cf. c. 179) or the institution of a presented candidate (c. 163). In this normative context, c. 157 recognized the competence of the diocesan bishop to promote by free conferral the ecclesiastical offices in the particular church, unless otherwise expressly provided by law. This allowed exception in c. 157 occurs intentionally in several cases envisioned in the *CIC*, for example, regarding the composition of the diocesan councils and the appointment of holders of several individual offices.[1]

2. Canon 470 is best read as a concretization of c. 157 in the specific case of the offices of the diocesan curia. It emphasizes, therefore, the freedom of the diocesan bishop in the selection and appointment of the members of the curia, without allowing explicit exceptions to this general principle. The basis of this episcopal discretion stems not only from the characteristics proper to the office of diocesan bishop (to whom belongs all the ordinary power in the diocese, proper to and immediate for his function, and to whom originally correspond legislative, executive, and

1. Cf. cc. 497, 509 § 1, 512 § 1, 523, 553 § 2, 557 §§ 1 and 2, 565, 682 § 1.

judicial governance: cf. cc. 381 § 1 and 391 § 1), but also in the specific profiles of the offices of the curia. These offices, in effect, collaborate with the bishop in the governance of the diocese; therefore a special responsibility falls to their holders which requires a special confidence on the part of the bishop: they are the close collaborators of the diocesan prelate in his pastoral tasks. Therefore it is logical that the bishop remain free to form his group of collaborators beginning with his appointment of them.

3. Although c. 470 does not expressly refer to the procedure for free conferral of the offices of the curia, it is understood by virtue of c. 157 that other possible systems are excluded as a general criterion, as can be a prior election or presentation of the candidates by a diocesan college. Nevertheless, the broad formulation of c. 470 can recognize nuances derived from the combination of custom and particular law (including here the canonically manifested positive will of the diocesan bishop himself). It must be remembered in this sense that the regulation of the *CIC* over the procedures for filling ecclesiastical offices is frequently referred to the determination of the particular law and the statutory law.[2] On the other hand, the personal involvement of the bishop in the curial appointments is not necessary in all cases because in some offices of lesser importance one of his vicars closest to the curia can act through a special mandate (cf. c. 134 § 3). Finally, the fact that c. 470 emphasizes the absence of the bishop's being bound by procedures prior to the appointments does not logically imply that the bishop cannot or even should not be adequately advised before proceeding with the conferral of the office. The freedom of the bishop in the curial appointments has attached to it a special responsibility in the search for and selection of candidates and therefore he must consult various people. The *CIC* itself establishes, for example, that the bishop must listen to his college of consultors and to the council for economic affairs before appointing the diocesan financial officer (cf. c. 494 § 1).

4. Although appointment for a fixed time facilitates the renewal of the people and the offices themselves, frequently the holders of curial offices can be named for an indefinite time. The aim here is to assure continuity in the action of governance and in the direction of diocesan works of apostolate, and also the joint permanence of the bishop's closest collaborators. Ordinarily the vicar general is appointed for an indefinite time, for example, in contrast to the episcopal vicar who is always appointed temporarily (cf. c. 477 § 1, with the exception referring to the auxiliary bishop). Likewise the appointments of the diocesan judges are temporary (cf. c. 1422).

5. Regarding the form of appointment, the present canon establishes no specific conditions. It must be kept in mind here the provisions of

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2. Above all, the *CIC* does this through the clause "nisi aliud iure statuatur" or using similar expressions: cf. cc. 157, 158 § 1, 161 § 1, 164, 165, 174 § 1, 176, 180 § 1, etc.

c. 156: "The provision of any office is to be made in writing." In contrast, c. 474 is not applicable, which requires the signature of the ordinary for the validity of the acts of the curia for juridical purposes because c. 470 refers to strictly episcopal acts and not to those of the curia. Therefore the appointment for the offices of the curia must be made in writing so as to guarantee the certainty of the procedure. But this requirement is not an invalidating law (cf. c. 10), and is not required for the validity of the appointments.

6. The *CIC* does not establish in this chapter the personal conditions necessary for receiving an appointment. Therefore, the determinations regarding age, formation, necessary qualities, doctrine, experience, and incompatibilities depend on what the *CIC* itself establishes for each office and likewise on the dispositions of particular law regarding the suitability of the candidates. Keeping in mind that the diocesan curia can incorporate clerics and lay faithful (cf. *CD* 27), the *CIC* also establishes in several cases the requirement of ministerial priesthood to accede to some offices (cf. cc. 473 § 2, 478 § 1, 1420 § 4). In the case of the lay faithful who work permanently or temporarily in the curia, the obligations imposed by c. 231 § 2 regarding economic compensation and social welfare must also be observed.

7. As a consequence of the appointment and the purpose proper to the offices of the diocesan curia (collaboration with the bishop at the service of the entire diocese), a bond of dependence arises on the curial offices regarding the diocesan bishop. This dependence is especially shown in the activity of the administrative offices of the curia, which always must defer to the wishes of the bishop as the guarantor of communion. Consistent with his freedom in appointments, the bishop is also free to remove the holders of the offices of the curia, while always observing equity and the general norms regarding the loss of ecclesiastical offices (cc. 184ff). Several offices of the curia, and more specifically the ordinaries different from the diocesan bishop, cease when the see becomes vacant.

471 **Omnes qui ad officia in curia admittuntur debent:**
1° promissionem emittere de munere fideliter adimplendo, secundum rationem iure vel ab Episcopo determinatam;
2° secretum servare intra fines et secundum modum iure aut ab Episcopo determinatos.

All who are admitted to an office in the curia must:
1° promise to fulfil their office faithfully, as determined by law or by the Bishop;
2° observe secrecy within the limits and according to the manner determined by law or by the Bishop.

SOURCES: 1°: c. 364 § 2,1°
2°: c. 364 § 2,3°

CROSS REFERENCES: cc. 833, 5°; 1199ff

COMMENTARY

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1. To understand the scope of the obligations established in this canon it is useful to compare it with its predecessor, c. 364 § 2 of the *CIC*/1917, whose content was broader. The former c. 364 § 2 required that those appointed to the offices of the curia take an oath before the bishop ("in manibus Episcopi iusiurandum praestare") to faithfully discharge the office without the slightest favoritism. Moreover, it imposed upon them the obligation—not necessarily supported by an oath—of carrying out under the authority of the bishop the matters of his incumbency *ad normam iuris* and to observe secrecy, within the limits and according to the method determined by law by the bishop.

The present c. 471, besides eliminating the reference to the commitment of impartiality, establishes the need for a promise and not necessarily an oath. The canonical concept of an oath supposes "the invocation of the divine Name as witness to the truth," which should be made always with truth, good sense, and justice (c. 1199 § 1). A promise, in contrast, theoretically means a solemn expression of one's own will without an explicit religious formula. Nevertheless, because of the fact that it is formulated by one of faith and refers to an official activity in the diocese, it is difficult to think of a promise faithfully to perform an office in the curia and to observe secrecy without that commitment satisfying the character-

istics of a canonical oath. In practice, therefore, the promise of c. 471 will equal a promissory oath and the norms of the *CIC* regarding this subject will be applicable to it, for example, the prohibition that it be made by a proxy (c. 1199 § 2).

2. Canon 471 requires that "all who are admitted to an office in the curia" make a promise. In this expression must be included all the holders of offices regulated in this chapter of the *CIC* (cc. 469–495), but not the members of the diocesan councils,[1] despite their theoretical connection to diocesan curia understood in the broad sense.

3. The content of the obligations provided for in c. 471 is quite precise: faithfully to carry out the task and observe secrecy, in accordance in both cases with what the law and the bishop might establish. Both obligations have canonical consequences for those who assume them (e.g., possible sanctions for manifest failure in the obligations assumed) and naturally moral consequences.

a) The promise to perform faithfully the office is a commitment that reinforces the obligations pertaining to all faithful to fulfill "with great diligence" the duties relating to the particular church to which they belong (c. 209 § 2). To perform faithfully the office implies a broad group of requirements that constitute a total style of working in the diocese; among others, piety, spirit of service, impartiality, diligence, initiative, expertise, study, group vision, evaluation of personal circumstances, and also obedience: obedience to the law and to the directions of the bishop. It is important to emphasize in this sense that the expression "secundum rationem iure vel ab Episcopo determinatam" of no. 1° of the canon does not only refer to the formalities of the promissory act, but also to the determinations of the law and bishop regarding the activities proper to the office. This conclusion is deduced by considering the content of the preceding c. 364 § 2 of the *CIC*/1917, which referred with greater precision to the obligation to act *ad normam iuris* under the authority of the bishop. The issue is important since obedience is thus prompted to the law and to the bishop in activities that are not private, but *officially* diocesan. That obedience is especially necessary because correctly understood it serves the common welfare of the diocese. It avoids moreover the pastoral dimension of the activity in the diocesan curia's being cited in practice as an argument not to observe the law, with the negative consequences that such an attitude would pose for the diocesan governance itself and for the interested faithful or those faithful whom the acts of the curia intend to affect. The obligations contracted with a promise imply in a parallel way as much as possible the need for adequate formation that is periodically brought up to date so as to discharge the functions of the office effectively.

1. Cf. R. PAGÉ, *Les Églises particulières. I. Leurs structures de gouvernement selon le Code de Droit Canonique de 1983* (Montréal 1985), p. 65.

b) For its part, the obligation to observe secrecy supposes a guarantee to avoid damage to persons or the diocese itself. Nevertheless, it does not exclude important information regarding the matters handled in the diocesan curia, even more so when it is solicited by the affected faithful.[2]

Therefore, c. 471 alludes in its no. 2° to the limits that the bishop and the law itself can establish regarding the scope of this obligation.

4. Canon 471 is developed in the norms of the *CIC* regarding canonical procedures. In book VII the obligation to swear faithful performance of their work and to observe secrecy of office is imposed on all those who form a part of a tribunal or collaborated with it (cf. cc. 1454 and 1455). The obligations of c. 471 can be formalized in a single promissory act in accordance with the provisions of particular law.[3] It is fitting to observe as well that it pertains to the moderator of the curia, wherever it is constituted, to take care that the personnel of the curia duly perform their offices and effectively assume the obligations provided in c. 471 (cf. c. 473 § 1).

5. Finally, in relation to the subject matter of c. 471 one should recall that the content of the new formulas for the profession of faith and the oath of fidelity, published by the CDF, which took effect on March 1, 1989.[4] Pursuant to the provision in the note of presentation of the new formulas, both profession of faith (cf. c. 833, 5°; see commentary) and the oath of fidelity must be made by, among other people, the vicar generals, episcopal vicars, and judicial vicars, which are offices of the diocesan curia.

2. Cf. c. 487 § 2, regarding the right to access the documents in the archives of the Curia.
3. Cf. L. DEL AMO, commentary on c. 1454, in *Pamplona Com.*
4. Cf. *AAS* 71 (1989), pp. 104–106 and 1169.

472 **Circa causas atque personas quae in curia ad exercitium potestatis iudicalis pertinent, serventur praescripta Libri VII "De processibus" de iis autem quae ad administrationem dioecesis spectant, serventur praescripta canonum qui sequuntur.**

The provisions of book VII on 'Processes' are to be observed concerning cases and persons involved in the exercise of judicial power in the curia. The following canons are to be observed in what concerns the administration of the diocese.

SOURCES: c. 365; *DPMB* 200

CROSS REFERENCES: cc. 135, 381 § 1, 391

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1. The diocesan curia expresses collaboration with the bishop in the governance of the entire diocese understood in the broad sense, that is, by including both the direction of pastoral activity and the activities of governance that are not necessarily manifested as acts of power (see commentary on c. 469). Canon 472 refers to the offices of the curia with the capacity of effecting binding juridical acts (namely, the activity of governance understood in the strict sense), and sets forth on this level the broadest question regarding the relationship between the unity of diocesan power and the distinction in its exercise and organization.

Canon 135 § 1 expresses the general principle that the power of governance is distinguished in legislative, executive, and judicial power. The Latin expression is *distinguitur*, that is "is distinguished," not "is divided," as translations of the official Latin text express it. This observation is not due to an obsession for terminological precision, but responds to the fact that in the Church the distinction of power is precisely that: a distinction in the organization and exercise of power, and not its division or constitutional separation, as occurs more or less in states. The meaning of distinction of powers in canon law need not be looked for in its mutual balance and limitation by virtue of the lack of concentration established by the law, but in an order of reason, an efficiency in governance, an aid to capital offices in their tasks, and a protection of the rights of the faithful by means of the distribution of competencies. In the particular context the bishop has "all the ordinary, proper and immediate power required for the

exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority" (c. 381 § 1; cf. *CD* 8a). And c. 391 § 1 emphasizes for its part that "the diocesan bishop governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law."

2. Once the constitutional principle is recalled regarding the unity of episcopal power, it must be emphasized that the distinction of functions in their exercise is possible and desirable, depending on the canonical organization provided: vicars general or episcopal vicars for executive power, and a judicial vicar and other judges for judicial power (cf. c. 391 § 2). In practice the administrative vicars and episcopal delegates are the ones who work in the administrative context (in some cases they need a special mandate pursuant to c. 134 § 3), and almost always the judicial vicars and other judges are the ones who administer justice in the diocese since the complexity and specialization of the judicial function advises against its personal exercise by the bishop (who, nevertheless, is inherently a judge of first instance: c. 1419 § 1).

3. Administrative and judicial activity in the diocese is exercised only through an organization established in the diocesan curia. Normally two "sections"[1] are thus spoken of regarding the curia: the administrative section, which is normally presided over by the vicar general, and the judicial section, at the head of which is the judicial vicar. This is not the place to summarize the distinction between both sections of the curia from the point of view of the nature of the function that is exercised there. In contrast, there can be recalled several structural differences between them.

a) In the first place, the offices that make up each one of the sections are different and have no hierarchical relationship between themselves. In the administrative context, moreover, a technique of delegation is utilized, while for the case of judicial power only the delegation of preparatory acts of decree or judgment is allowed (c. 135 § 3).

b) On the other hand, the vicars and administrative delegates are strictly subordinated to the diocesan bishop such that they cannot act contrary to his will; they must inform him at all times of their projects and acts already done, and put into practice all the directions that they might receive from him. They can consider their competence limited by episcopal reservation, and to realize certain acts they need a special mandate (cf. cc. 480 and 479 §§ 1 and 2). In contrast, the exercise of judicial vicarial power is not subject to such provisos because—other than the causes the bishop has reserved to himself—the judicial vicar constitutes a single tribunal with the bishop and, upon pronouncing judgment with the

1. Cf. G. GIULIANI, *I canoni generali sulla curia diocesana* (Rome 1988), pp. 54ff.

necessary moral certainty, he only owes obedience to the law and his conscience (cf. cc. 1420 § 2 and 1608).

c) Finally, the power of the administrative vicars ends with the vacancy of the see and is suspended when the diocesan bishop is suspended from his office (cf. c. 481 and its exceptions), while the diocesan judges do not cease upon the vacancy of the see (cf. cc. 1420 § 5 and 1422).

473 **§ 1. Episcopus dioecesanus curare debet ut omnia negotia quae ad universae dioecesis administrationem pertinent, debite coordinentur et ad bonum portionis populi Dei sibi commissae aptius procurandum ordinentur.**

§ 2. Ipsius Episcopi dioecesani est coordinare actionem pastoralem Vicariorum sive generalium sive episcopalium; ubi id expendiat, nominari potest Moderator curiae, qui sacerdos sit oportet, cuius est sub Episcopi auctoritate ea coordinare quae ad negotia administrativa tractanda attinent, itemque curare ut ceteri curiae addicti officium sibi commissum rite adimpleant.

§ 3. Nisi locorum adiuncta iudicio Episcopi aliud suadeant, Moderator curiae nominetur Vicarius generalis aut, si plures sint, unus ex Vicariis generalibus.

§ 4. Ubi id expedire iudicaverit, Episcopus, ad actionem pastoralem aptius fovendam, constituere potest consilium episcopale, constans scilicet Vicariis generalibus et Vicariis episcopalibus.

§ 1. The diocesan Bishop must ensure that everything concerning the administration of the whole diocese is properly coordinated and is directed in the way that will best achieve the good of that portion of the people of God entrusted to his care.

§ 2. The diocesan Bishop has the responsibility of coordinating the pastoral action of the Vicars general and episcopal Vicars. Where it is useful, he may appoint a Moderator of the curia, who must be a priest. Under the Bishop's authority, the Moderator is to coordinate activities concerning administrative matters and to ensure that the others who belong to the curia properly fulfil the offices entrusted to them.

§ 3. Unless in the Bishop's judgement local conditions suggest otherwise, the Vicar general is to be appointed Moderator of the curia or, if there are several Vicars general, one of them.

§ 4. Where the Bishop judges it useful for the better promotion of pastoral action, he can establish an episcopal council, comprising the Vicars general and episcopal Vicars.

SOURCES: § 1: *CD* 17; SCB-SCCong Let., 19 iul. 1972; Paulus PP. VI, Ap. Const. *Vicariae potestatis*, 6 ian. 1977, 1 § 3 (*AAS* 69 [1977] 7)
§ 2: *CD* 25, 26

CROSS REFERENCES: cc. 407, 474, 475, 487 § 1, 488

COMMENTARY

Antonio Viana

1. The commentators on the *CIC* have frequently emphasized the innovation that c. 473 poses in the canonical system. For the first time, in effect, the universal law expresses the obligation that diocesan administrative action be informed by the principle of coordination. But besides the proclamation of the general principle—which by itself is a certain advance—the *CIC* states the channels that make it possible.

Coordination is a criterion of good governance that shapes the relationships of the ecclesiastical offices to the authority on whom they depend and also among themselves. Its purpose is to promote unity of action in governance understood in the broad sense, so that all the offices of the curia keep in mind the common objectives of their respective tasks and effectively accomplish them. This is required not only for practical reasons of efficiency (reasons whose importance it is not necessary to emphasize), but also for the common fact of ecclesiastical communion, which requires the office holders continuous orientation toward the external centers of unity: in this case unity with the diocesan bishop. From the negative point of view, coordination also has a preventative meaning because it permits the avoidance of unnecessary activities, of fragmented or of even contradictory natures, which could occur from the combination of many different people involved in administration.

Consequently, coordination requires authority that effectively promotes it through information, distribution of tasks, and control of their development. That authority must be endowed with effective faculties of direction, although theoretically a relationship of dependence and subordination is not necessary between the director and the persons who develop the coordinated activities. The coordinator is not necessarily a hierarchical superior.

On the other hand, it must be kept in mind that the necessity of coordination is all the more urgent as the diocesan administrative organization becomes more complex; particularly in the most extensive and heavily populated dioceses, with a high number of causes and investigations and with a central curia made up of various offices. In the smaller dioceses, with smaller, less centralized administrative organizations, the problem is not presented with the same intensity.

2. Canon 473 establishes three organizational channels for administrative coordination: the diocesan bishop himself, the figure of the moderator of the curia, and the episcopal council.

a) The coordination that the *diocesan bishop* promotes has two aspects stated in c. 473. On one hand, the general coordination of diocesan

administration is understood broadly (§ 1). The bishop's duty in this case is specified as promoting unity in administrative action through general norms and individual acts. The canon suggests the personal responsibility of the bishop on this subject so that there is not a total loss of concentration in this duty, although logically other people could and should participate in putting it into practice. On the other hand, the bishop must see to the coordination of the pastoral activity of his administrative vicars (§ 2). The basis for this personal obligation of the bishop stems from the possibility of several vicarial offices (especially in the largest dioceses) and especially in the canonical fact that such offices are not hierarchically subordinated in themselves.

b) For its part, the figure of the *moderator* of the curia mentioned in c. 473 is new to universal canon law. Its close forerunners must be sought in particular law, and more specifically in the figure of the secretary general present in various diocesan curias before the promulgation of *CIC*. Its tasks are precisely those of a secretariat, namely, administrative coordination inside the curia and the task of seeing to it that all the offices of the curia faithfully perform their functions. He must be informed by the chancellor about the juridical acts of the curia (c. 474). Other functions of the moderator are expressed in cc. 487 § 1 and 488. Although theoretically all these functions can be performed by any duly prepared members of the faithful, the law expresses the necessity (*oportere*) of the moderator being a priest.[1] The reason for this condition seems to consist in motives of a practical character, as, for example, the advisability that the vicar general be the one who performs the function of moderator (and the vicar general must be a priest, pursuant to c. 478 § 1); the fact that the moderator is intended to direct the activity of the offices of the curia performed by clerics; the guarantee of a formation that supposes the priestly ministry; and the fact that ordinarily economic compensation is less in the case of the clerics than in the case of lay faithful. Another characteristic of the office of the moderator is its facultative and nonpreceptive character for the dioceses.

In the exercise of his coordinating functions, the moderator always acts under the authority of the bishop. This aspect was emphasized during the preparatory work for the present canon. On the one hand, differentiating the activity of the moderator within the curia from the general coordinating activity that falls personally to the diocesan bishop was insisted upon: both coordinate, but at different levels of action.[2] On the other hand, the generic denomination of "moderator" substituted for that of *Caput curiae*, as was envisioned in the initial draft, which could question in some way the responsibility of the bishop over the curia.[3]

1. Cf., however, c. 286 of *Schema* of 1977, which does not contain this requirement.
2. Cf. *Comm.* 5 (1973), pp. 225 and 226; and 13 (1981), pp. 114ff.
3. Cf. ibid. 5 (1973), pp. 225–226.

The figure of moderator or secretary general is especially apt for a diocese with a more complex administrative organizations, especially in the cases of curias with various vicars general and episcopal vicars. Canon 473 § 3 expresses in this sense that the vicar general of the diocese must be appointed as the moderator of the curia, or one of them if there are several, except when the circumstances require otherwise in the judgment of the bishop. In the dioceses in Spain, Italy, and France the function of the moderator of the curia is normally exercised by the vicar general of the diocese.[4]

c) Finally, c. 473 § 4 regulates another coordinating instrument, in this case not an individual but a collective instrument, the *episcopal council*. This is the only place in the *CIC* where the new organization is mentioned whose function is described in very general terms: "ad actionem pastoralem aptius fovendam." Consequently, it is particular law that must determine the nature, composition, functions, and relationships of this council with others established in the diocese. It is an entity that in fact forms a part of the organization of several particular churches,[5] but that is not required to be instituted in all the dioceses. The functions of coordination of the activity of the diocesan vicars can be accomplished without need to constitute formally an episcopal council.

The episcopal council can be especially useful in dioceses with various administrative vicars and also in putting the provisions of c. 407 in to better practice, regarding mutual consultation between the diocesan bishop, the coadjutor bishop, and the auxiliary bishops. It is not a representative organization of the diocesan offices, nor even of those who belong to the administrative curia because the *CIC* states that it is composed of the vicars general and episcopal vicars. Nevertheless, it presents the problem of whether the reference to the vicars is restricted[6] or whether a broader composition of the episcopal council is allowed. A study of the preparatory works for c. 473 § 4[7] serves as a better basis for the first solution; nevertheless, keeping in mind that it is an organization clearly bound to the diocesan curia and which must be regulated by particular law, the moderator of the curia (also when he is different from the vicar general), and the chancellor (by virtue of the nature of the functions described in cc. 474 and 482 § 1), could also belong to the episcopal council, besides the other members designated by the diocesan bishop.

4. Cf. R.-B. TRAUFFER, "Diocesan governance in european dioceses following the 1983 Code: an initial inquiry," in J.K. MALLETT (Ed.), *The Ministry of Governance* (Washington 1986), p. 198.

5. Cf. R. PAGÉ, *Les Églises particulières. I. Leurs structures de gouvernement selon le Code de Droit Canonique de 1983* (Montréal 1985), p. 73.

6. Cf. F. DANEELS, "De dioecesanis corresponsabilitatis organis," in *Periodica* 74 (1985), p. 309.

7. Cf. *Comm.* 13 (1981), pp. 116–117; and 14 (1982), p. 213.

Another problem that regulation of the episcopal council presents is that c. 473 § 4 establishes nothing about the presidency and possible relationship of the diocesan bishop with the council. For one author, the silence of the *CIC* on this subject allows the episcopal council also to be oriented toward the direct service of the functions of coordination entrusted to the moderator of the curia by c. 473 § 2.[8] In any case, through the presidency by the diocesan bishop the mandate to coordinate the activity of the vicars could be put into practice, which is the personal duty of the bishop (c. 473 § 2). Finally, it is fitting to state that the meaning of the episcopal council is not to collectively exercise administrative power, but to unify criteria, give and receive information or directions regarding tasks realized or that will be afterwards personally promoted.[9] Thus, it is an organization at the service of the internal coordination of the activity of the vicarial offices.

8. Cf. W. AYMANS, "Die Leitung der Teilkirche," in *Le nouveau Code de Droit Canonique, Actes du Ve Congrès international de Droit canonique* (Ottawa 1986), p. 602.

9. Cf. J. SÁNCHEZ Y SÁNCHEZ, commentary on c. 473, in *Salamanca Com.*

474 **Acta curiae quae effectum iuridicum habere nata sunt, subscribi debent ab Ordinario a quo emanant, et quidem ad validitatem, ac simul a curiae cancellario vel notario; cancellarius vero Moderatorem curiae de actis certiorem facere tenetur.**

Acts of the curia which of their nature are designed to have a juridical effect must, as a requirement for validity, be signed by the Ordinary from whom they emanate. They must also be signed by the chancellor of the curia or a notary. The chancellor is bound to notify the Moderator of the curia about these acts.

SOURCES: cc. 372 § 3, 373 § 1, 374 § 1,2°

CROSS REFERENCES: cc. 124ff, 473, 482

COMMENTARY

Antonio Viana

1. This canon, without precedent in the canonical legislation prior to the *CIC*, constitutes a new sample of the impetus that the universal legislator wanted to give to administrative coordination in the diocese. In this case the legislator first establishes the principle of the double signature[1]—that of the corresponding ordinary and of the chancellor or notary—on those acts of the curia intended to produce juridical effects. By acts with juridical effects it must be understood here, in the context of the diocesan curia, all administrative acts: general or normative and particular (executory general decrees, directories, individual decrees, individual precepts, rescripts, privileges, and dispensations).[2] Therefore, this requirement does not necessarily refer in principle to the other acts, such as doctrinal or directive documents, which might be published by the departments of the curia. In the second place, to reinforce the prior guarantee, c. 474 imposes the obligation on the chancellor of informing the moderator of the curia—where such a figure exists—about the endorsed acts.

2. The cautions and controls required by the present canon are justified by keeping in mind the high number of ordinaries that can be constituted in dioceses, all with executive power and the consequent capacity to issue juridical acts. In this sense, the signature of the chancellor and the

1. Cf. J.I. ARRIETA, commentary on c. 473–474, in *Pamplona Com.*
2. Cf. cc. 31, 34, 48, 49, 59, 76, 85.

report to the moderator of the curia—or, if there is no moderator, to the one who takes his place as the secretary general—serve as well to avoid the existence of acts coming from various ordinaries that might be contradictory among themselves. (Cf. in this sense the provisions of c. 65 regarding rescripts, and of cc. 53 and 67 regarding decrees and rescripts contradictory among themselves.) In this sense, c. 474 must be interpreted in the context of the provisions of cc. 124ff regarding the validity and efficacy of juridical acts.

3. In this context, c. 474 presents some interpretive questions. In the first place, it refers to the acts of curia proper. This context is important since the requirement of c. 37 that administrative acts be in writing is not generally considered a requirement for the validity of an act:[3] c. 59 § 2 expressly refers, for example, to the verbal granting of permission. These cases of oral administrative acts cannot be considered as acts of the curia. Seeing the problem in a negative light, it would be fitting to state that the juridical efficacy of the administrative acts of the curia of an oral character is not canonically possible, keeping in mind the requirement of a signature contained in c. 474.

A second interpretive question is the scope of the participation of the chancellor that the act of the ordinary sanctions. The question that could be presented is also whether his signature is required for the validity of the act. One author has taken this approach,[4] but the majority opinion is that the signature of the chancellor is only a subsequent guarantee of the authenticity of the act and of internal coordination.[5] In effect, the inclusion of *et quidem ad validitatem* refers only to the signature of the ordinary, which is the conclusion arrived at as well after studying the preparatory works of the present canon.[6]

3. Cf. P. LOMBARDÍA, commentary on c. 35, in *Pamplona Com.*

4. Cf. A. SOUSA COSTA, commentary on cc. 460–572, in *Commento al Codice di Diritto Canonico*, a cura di Mons. P.V. Pinto (Rome 1985), p. 276.

5. Cf. J.I. ARRIETA, commentary on cc. 473–474, cit.; G. GIULIANI, *I canoni generali sulla curia diocesana*, Rome 1988, p. 65; R. PAGÉ, *Les Églises particulières*. I. *Leurs structures de gouvernement selon le Code de Droit Canonique de 1983* (Montréal 1985), p. 75.

6. Cf. *Comm.* 5 (1973), p. 226; and 14 (1982), p. 213.

ART. 1
De Vicariis generalibus et episcopalibus

ART. 1
Vicars General and Episcopal Vicars

475 **§ 1. In unaquaque dioecesi constituendus est ab Episcopo dioecesano Vicarius generalis, qui potestate ordinaria ad normam canonum qui sequuntur instructus, ipsum in universae dioecesis regimine adiuvet.**

§ 2. Pro regula generali habeatur ut unus constituatur Vicarius generalis, nisi dioecesis amplitudo vel incolarum numerus aut aliae rationes pastorales aliud suadeant.

§ 1. In each diocese the diocesan Bishop is to appoint a Vicar general to assist him in the governance of the whole diocese. The Vicar general has ordinary power, in accordance with the following canons.

§ 2. As a general rule, one Vicar general is to be appointed, unless the size of the diocese, the number of inhabitants, or other pastoral reasons suggest otherwise.

SOURCES: § 1: c. 366 § 1; SCPF Rescr., 7 nov. 1929; *CD* 27; *DPMB* 201
§ 2: c. 366 § 3; *ES* I, 14 § 1; *DPMB* 161, 201

CROSS REFERENCES: cc. 131 §§ 1 et 2, 134, 135, 391 § 2, 1420 § 1

COMMENTARY

Antonio Viana

1. This canon is concerned with the office of vicar general, a figure with an extensive tradition, named by Vatican Council II *officium eminens* in the diocesan curia (*CD* 27) and enhanced by the *CIC* in this canon,

which requires that it must be constituted in each diocese. Thus it is an office necessarily incorporated into the organizational structure of the diocese and whose constitution is not left to the discretion of the diocesan bishop. In this way the universal legislator considers that the importance of the functions attributed to the vicar general and the proven efficacy of the office throughout history impel its definitive institution in all the Latin dioceses. Likewise, the same occurs in the universal law applicable to the Eastern Catholic Churches because the *Protosyncellus* (an office parallel to the Latin vicar general), is also of preceptive constitution in the Eparchies or particular churches of the East (cf. c. 245 *CCEO*).

2. The vicar general is an office incorporated into the diocesan curia whose holder, freely appointed by the bishop, vicariously participates in episcopal administrative power over the entire diocese. In general it can be stated that the practical importance of the office of vicar general stems from the fact that it allows a decentralization of several episcopal functions—and more specifically of the administrative power of the diocesan bishop—in a more stable manner, without need for the bishop to exercise his power personally in every case. Therefore, this vicarious channel of participation and exercising of episcopal power allows the bishop's attention to be directed to other tasks, and at the same time it includes several typical canonical instruments so that, in the proper case, the bishop can personally exercise the power shared by the vicar general. These canonical instruments in aid of unity of diocesan power are the episcopal reservation and special mandate (see commentary on c. 479).

3. This dimension of collaboration with the bishop that is characteristic of the office of vicar general can be observed clearly in its historical evolution if the vicar general is considered as the customary successor to the archdeacons and if the thesis of his independent historical origin is accepted.

In effect, the issue of the historical origin of the vicar general was for a long time indisputably linked with the figure of the archdeacon of the diocese.[1] The archdeacon already stood out in the fourth century among the bishop's group of collaborators. It constituted an office of free episcopal designation whose holder was a deacon who occupied a place inferior to the presbyters in order, rank, and privileges. Afterwards, around the ninth century, the archdeacons had already received holy orders. Then in the fourth and fifth centuries the *archidiaconus* acted sometimes as *os et manus Episcopi*,[2] by exercising genuine jurisdiction in different contexts,

1. For background to the topics presented here, cf. A. AMANIEU, "Archidiacre," in *Dictionnaire de Droit Canonique* I (1935), cols. 948–1004; R. SOUARN, "De origine Vicarii generalis," in *Ius Pontificium* 18 (1938), pp. 91ff; F.X. WERNZ, *Ius Decretalium*, II–2, 3rd ed., Prati 1915, pp. 634ff; I. CHELODI, *Ius de personis iuxta Codicem Iuris Canonici* (Tridenti 1922), pp. 304ff.

2. The expression is found in the Decretals (cf. *X* I, 23, 7) and the Council of Trent (cf. *sess.* XXIV, c. 12, *de ref.*).

as for example the discipline of the clergy or the administration of ecclesiastical goods. Between the sixth and tenth centuries, for a series of reasons that cannot be mentioned here with the necessary depth, the scope of its power grew, such that the archdeacon became the most important office in the diocese after the bishop. The power of the archdeacon (or of archdeacons where there were several) became so broad that it created tension with the episcopal authority itself and expanded abuses. For this reason, bishops began to appoint several collaborators or representatives more closely linked to their person and authority than were the predecessors of the vicars general. The succession of the *archidiaconus* by the vicar general occurred throughout the twelfth and thirteenth centuries.

This traditional opinion regarding the origin of the vicar general was criticized several decades ago by Edouard Fournier, starting with the experience of the French dioceses.[3] For Fournier the vicar general is not derived from the fight for power between the bishops and archdeacons but has an autonomous origin. Outside the ecclesiastical context its closest precedents would be found in the figure of the *Procurator generalis*, known by the Roman law as a juridical institution to foster the general representation of rights and interests of one person in favor or another. Specifically, the vicar general appears in the dioceses in the twelfth and thirteenth centuries, a time characterized by a marked absenteeism from their territories on the part of bishops because of their attendance of the councils, their personal participation in the Crusades, etc.[4] In such cases of prolonged absence, bishops appointed a procurator or vicar to represent them temporarily, endowed with broad jurisdiction *in spiritualibus et in temporalibus*. At first this person exercised jurisdiction by mandate of the bishop and temporarily so, while maintaining the situation of *Episcopus in remotis*. But with the passage of time the function of the procurator or vicar was stabilized to the point of becoming a stable collaborator of the bishop in the ordinary governance of the diocese and not only in the cases of his absence.

Besides the specific issue regarding the origin and progressive institutionalization of the vicar general in the dioceses, it is fitting to emphasize in the historical evolution of the office the existing relationship between the vicar general and the diocesan *officialis* or judge.

Given the breadth of the power of the vicar general in the cases of absence of the bishop, the former was temporarily constituted in the diocese as a hierarchical superior of the rest of the collaborators in the curia, including the *officialis*. When the vicar general was constituted *a latere Episcopi*, that is, as an ordinary collaborator in the governance of the dio-

3. Cf. E. FOURNIER, *L'origine du Vicaire général et des autres membres de la Curie diocésaine* (París 1940). Also C.J. KUHLMANN, "De evolutione muneris Vicarii Generalis," in *Revue de Droit Canonique* 13 (1963), pp. 149–174, 227–247 and 327–341.

4. Cf. E. FOURNIER, *L'origine du Vicaire général...*, cit., especially pp. 299–318.

cese, the former relationship of subordination to the *officialis* regarding the vicar general went on gradually to become a relationship of equality because both already depended immediately on the bishop.

Nevertheless, the distinction between the vicar general and the *officialis* or judge of the diocesan curia, was not clearly reflected in the former texts.[5] For its part, the doctrine subsequent to the Council of Trent had difficulties when it came to marking the boundaries of the respective competences of both offices and stated that the vicar general was also canonically named "*officialis,*" and even exercised functions in a contentious setting.[6] This was understandable if the practical situation of the dioceses was kept in mind, which did not always foster a theoretical distinction of functions between both offices. Specifically, the Italian dioceses[7] did not recognize the vicar general/*officialis* dualism because both offices were normally united in the person of a single holder because of the smaller size of the diocesan territory. In such cases, one person was in charge of performing administrative and judicial functions as vicar general or *officialis* of the bishop (*Vicarius generalis seu Officialis*).

In the face of the prior practical diversity, the *CIC*/1917 clearly distinguished the offices of the vicar general and *officialis*. The vicar general had to be one person, except when the size of the diocesan territory or the diversity of rites suggested otherwise (c. 366 § 3). Only in the cases of a smaller diocesan territory or scarcity of cases to be resolved was it allowed that both offices have the same holder (c. 1573 § 1). In such cases, when the episcopal see became vacant, only the office of vicar ceased and not the office of *officialis* (c. 1573 § 6).

4. We can now emphasize some of the characteristics proper to the office of the vicar general starting with the current regulation, beginning specifically with the present c. 475.

We have already pointed out a first important aspect of the office, which consists in is obligatory constitution ("in unaquaque dioecesi constituendus est ab Episcopo," states c. 475 § 1), in contrast to the regulation established in c. 366 § 1 of the *CIC*/1917. Therefore, every diocese must have its vicar general. Another characteristic that can be pointed out is the general rule that there only be one vicar general constituted in the diocese, except when the size of the diocese, the number of inhabitants, or other pastoral reasons suggest otherwise. The reference to *aliae rationes pastorales* as a sufficient title to constitute several vicars general poses a clear extension with respect to the discipline of the *CIC*/1917.

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5. Cf. *X* I, 23 and 28; *X* I, 38, 9; *VI* I, 9, 3; *VI* I, 13, 1–3; *VI* III, 4, 3; *Clem.* II, 7.

6. Cf. L. FERRARIS, *Prompta Bibliotheca canonica, iuridica, moralis, theologica*, 4th ed., VII (Bononiae-Venice 1763), art. 1, no. 43; A. Reiffenstuel, *Ius Canonicum Universum*, I (Antwerp 1755), lib. I, tit. XXVIII, I, no. 18; A. Barbosa, *Iuris Ecclesiastici Universi Libri Tres* (Lugduni 1634), lib. I, ch. XV, no. 17.

7. Cf. E. FOURNIER, *L'origine du Vicaire général...*, cit., p. 332.

5. With respect to the nature of the power of the vicar general, two aspects stand out in c. 475 § 1: in the first place, it is an ordinary power; in the second place, it is simultaneously a power of general scope since it is intended to aid the bishop in the governance of the entire diocese. This last aspect of the power of the vicar general presents the problem of its relationship with other possible vicarial offices in the diocese: see, in this regard, commentary on c. 467. In contrast, several observations regarding the ordinary power of the vicar general will now be in order.

The classification of the power of the vicar general as ordinary is canonically certain, but it is not sufficient, keeping in mind the plurality of offices with ordinary power. Strictly speaking, it must be said that the vicar general exercises an ordinary and vicarious power, as his denomination itself indicates. Moreover, it is a power of an administrative character, not legislative or judicial, and circumscribed by the boundaries of the diocese. Therefore, c. 475 § 1 states that the vicar general is endowed with ordinary power "ad normam canonum qui sequuntur," which subsequently specifies its nature, scope, and limits.

a) The controversy regarding whether the vicar general of the diocese exercised an ordinary power or rather a delegated power was an old question already set forth by the classical canonical doctrine, together with other similar problems, like for example that of the nature of delegation *a iure*.[8] Nevertheless, the canonical codification of the twentieth century has established in all clarity that the power of the vicar general must be interpreted in the context of the norms relative to ordinary power and not delegated power, such that the vicar general has the canonical consideration of "ordinary" and "local ordinary" (cf. cc. 197 § 2 *CIC*/1917, and 131 § 2, 134 §§ 1 and 2, and 475 *CIC*). This concept has important canonical consequences like, for example, the nonapplication to the vicar general of the norms relative to the proof, exercise, subdelegation, interpretation, and termination of delegated power (cf. cc. 131 § 3ff). The power of the vicar general is thus linked to the office by virtue of the universal law (cf. c. 131 § 1), such that the vicar does not need specific authorization from the bishop, case by case, to be able to exercise his power. The determination of the power of the vicar general by the universal law excludes the competence of the bishop over the specific content of that vicarious power, without prejudice to the diocesan bishop's ability to broaden the power of the vicar through delegation or else to restrict its scope through a power of reservation (cf. c. 479 § 1). In this sense the office of vicar general depends for its dynamism on the episcopal office, but structurally it is configured by the law with several characteristics proper and particular to it.

8. Cf. M. CABREROS DE ANTA, "Concepto de potestad ordinaria y delegada," in *Estudios Canónicos* (Madrid 1956), pp. 200 ff; V. DE PAOLIS, *La natura della potestà del Vicario generale. Analisi storico-critica* (Rome 1966), *passim*.

b) On the other hand, the power of the vicar general is expressly referred to by the *CIC* (cf. c. 479 § 1) in the administrative context, in contrast to the expression "in spiritualibus ac temporalibus," with a historical tradition but excessively generic, contained in c. 368 § 1 of the *CIC*/1917. A joint interpretation of the cc. 135 § 2, 391 § 2, and 479 § 1 excludes, in effect, the hypothetical attribution of legislative and judicial power to the vicar general. Under this last aspect, the *CIC* confirms the historical distinction between the vicar general and the *officialis* of the diocese (presently called judicial vicar), not only through the assignation of different functions to both offices (cf. c. 391 § 2), but also by establishing that their holders must be different (unless the small size of the diocese or a scarcity of cases suggest otherwise), and that the office of judicial vicar does not cease on the vacancy of the see, in contrast to the case of the vicar general (cf. cc. 1420 §§ 1 and 5, 481 § 1).

c) Finally, within these general considerations regarding the nature of the power of the vicar general it must be emphasized that besides its being conceptualized as an ordinary, administrative, and diocesan power, it is classified specifically as vicarious: vicarious of the bishop.

In general, vicarious power is distinguished from proper power in that it is exercised in someone else's name; that is, it is a power linked by the law to certain ecclesiastical offices (ordinary power) whose mission is to collaborate in an auxiliary manner and subordinated to capital offices, with those offices endowed with proper power by divine or human law. The vicar general, in effect, collaborates with the bishop in diocesan governance within the limits established by law. It expresses, therefore, an organic participation in the power of the diocesan bishop itself.[9]

6. The interpretation of the vicarious power of the diocesan vicar general has to coordinate the elements that have traditionally characterized the vicariate with other more recent elements that are also contained in the current universal legislation. They are traditional characteristics typical of the vicar general since the office is vicarious: its configuration as an office of confidence, autonomous but closely linked to the capital diocesan office; the free appointment and removal from office by the bishop; strict dependence on the bishop when acting; and also the general principle that the vicarious office follows the fate of the capital office (its ceasing and suspension of the power of the vicar general when the see becomes vacant and when the power of the bishop is suspended). On the other hand, among the new elements of universal legislation that bears on the interpretation of the power of the vicar general the following can be emphasized: the principle of distinction of functions in the power of governance and the new approach to administrative control of vicarial acts.

9. Cf. A. VIANA, "Naturaleza canónica de la potestad vicaria de gobierno," in *Ius Canonicum* 28 (1988), especially pp. 100–103 and 122–130.

The first aspect has already been recalled by means of the reference to cc. 135, 391, and 479 § 1, which link the power of the vicar general to the administrative context: the application of the law. Regarding the administrative control of vicarious acts, the new regulation of the hierarchical appeal in cc. 1732ff implies the canonical possibility of appealing administrative acts issued by the vicar general to the bishop, since the former is subordinate to the bishop. Such a possibility was denied by the doctrine prior to the *CIC*, which stated that the bishop and his vicar constituted a common authority, "unum tribunal." In reality this negative conclusion was already inappropriate in the context of the norms of the *CIC* 1917 because it was based in the confusion between the judicial and administrative context. In effect, as we have already stated in the historical notes to this commentary, the cases were not rare in which the same person simultaneously performed the offices of vicar general and *officialis* or diocesan judge. On this basis the former doctrine denied the possibility of *appealing* to the bishop for the act of the "vicarius generalis *seu* Officialis," since the bishop and his vicar-judge constituted only one prosecutorial authority in the diocese.[10] Nevertheless, in the context of the current discipline, the distinction of functions between the offices of the vicar general and judicial vicar, as well as the regulation of the hierarchical appeal, present serious difficulties for the concept of the diocesan vicariate as a juridical identity between the offices of diocesan bishop and vicar general. Likewise they do not allow, in my judgment, to conceive of the vicariate as a direct canonical representation of the capital office (the vicar general as representative of the diocesan bishop).[11] On the contrary, the diocesan vicariate must be interpreted today in the context of the distinction of power promoted by cc. 135 and 391, by assessing especially the strict configuration of the vicar general as an administrative office.

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10. Regarding this question, cf. ibid., pp. 112–119.
11. Regarding doctrines of identity and canonical representation as applied to the power of the vicar, cf. ibid., pp. 105–109.

476 **Quoties rectum dioecesis regimen id requirat, constitui etiam possunt ab Episcopo dioecesano unus episcopalis Vicarius plures Vicarii episcopales, qui nempe aut in determinata dioecesis parte aut in certo negotiorum genere aut quoad fideles determinati ritus episcopalis Vicarius certi personarum coetus, eadem gaudent potestate ordinaria, quae iure universali Vicario generali competit, ad normam canonum qui sequuntur.**

As often as the good governance of the diocese requires it, the diocesan Bishop can also appoint one or more episcopal Vicars. These have the same ordinary power as the universal law gives to a Vicar general, in accordance with the following canons. The competence of an episcopal Vicar, however, is limited to a determined part of the diocese, or to a specific type of activity, or to the faithful of a particular rite, or to certain groups of people.

SOURCES: *CD* 23, 27; *ES* I, 14 §§ 1 et 2; *DPMB* 119, 161, 202

CROSS REFERENCES: cc. 140 §§ 1 et 2, 406, 475

COMMENTARY

Antonio Viana

1. Canon 476 presents the figure of the episcopal vicar in its general characteristics and refers identification of the other elements of the office to the following canons. The most important characteristic of the new office is shown in this regulation to be its express canonical comparison with the office of vicar general. Therefore it is important first of all to state the common and different elements of both vicars.

a) Regarding the *characteristics common* to the vicar general and episcopal vicar, the following must be stated: both offices are vicarious of the diocesan bishop and the nature of their power is identical—ordinary, vicarious, administrative, and limited to the diocesan context (cf. cc. 475 § 1, 476, 479). Both the vicar general and episcopal vicar are ordinaries and local ordinaries (cf. c. 134 §§ 1 and 2), and they must always act in conformance with the will and intentions of the diocesan bishop (c. 480). The same norms affect them regarding personal capacity for the office and incompatible qualities for the office (c. 478), and likewise those relative to the method of appointment, removal, substitution, and the ceasing and suspension of power (cf. c. 477 and 481).

b) In contrast, the *principal differences* between the offices refer in the first place to their historical origin, which is varied. Likewise, they are different in their constitutive characteristics because while the office of vicar general is preceptive in the diocese and as a general rule there must be only one, the constitution of the episcopal vicar depends, in contrast, on the assessment of the diocesan circumstanaces by the diocesan bishop, who can appoint with absolute freedom one or several episcopal vicars (cf. cc. 475 and 476). On the other hand, the appointment of the episcopal vicar who is not be an auxiliary bishop must be temporary, while this norm does not affect the vicar general (c. 477 § 1). Finally, a very important difference between the offices consists in the scope of their power.

2. Let us look with great detail at the aspects relative to the historical origin and scope of the power of the episcopal vicar, which are closely related issues.

The origin of the episcopal vicar is located in Vatican Council II, or to be more precise, it was in the texts of the Council where the figure of the episcopal vicar was instituted with a universal character (likewise in the case of the Eastern Churches, whose organization recognized the figure of the *Syncellus*, which absolutely coincided with the Latin episcopal vicar: cf. c. 246 *CCEO*). Therefore, it is a matter of a recently instituted office, in contrast to the vicar general whose historical origin is much more remote (see commentary on c. 475).

The most important text of Vatican Council II regarding the new figure of the episcopal vicar is *Christus Dominus* 27, although there are also references in *Christus Dominus* 23 and 25. In *Christus Dominus* 27 the Council expresses itself in terms almost identical to the present c. 476. That is, the new figure of the episcopal vicar is regulated by express reference to the common law regarding the vicar general, but with the specification that the scope of the power of the episcopal vicar is limited to one part of the diocese (territorial criterion), certain matters (material or functional criterion), and the faithful of a certain rite (personal-ritual criterion). Nevertheless, the *CIC* has broadened the personal criterion—limited in *Christus Dominus* 23 and 27 to rite and linguistic diversity—by expressing in c. 476 that the episcopal vicar can be constituted also for a specific group of persons for a variety of reasons due to the rite or language of the faithful. Shortly after the closure of Vatican Council II, *Ecclesiae Sanctae* I § 14 applied the norms of the *CIC*/1917 regarding the vicar general to the episcopal vicar. In 1973, *DPMB* also referred to the episcopal vicar in several of its numbers (cf. 119, 161, and 202). Finally, the *CIC* confirms the canonical comparison in the present canons of the vicar general and the episcopal vicar by expressing that the latter has the canonical title of ordinary and local ordinary (c. 134 §§ 1 and 2).

The universal institutions of the episcopal vicar in the texts of Vatican Council II could have fulfilled two practical necessities, particularly felt in the largest and most complex dioceses.[1] In the first place, keeping in mind its facultative function and the specialization of his functions, the appointment of one or several episcopal vicars constituted an alternative solution and one more beneficial than the appointment of several vicars general for the same diocese. In the second place, the concept of a new office of episcopal vicar served also to clarify the juridical position of the auxiliary bishops in the dioceses because pursuant to *Christus Dominus* 26—and afterwards, pursuant to c. 406 § 2—the auxiliary bishop must be appointed vicar general or episcopal vicar by the diocesan bishop, unless otherwise provided in the apostolic letters of appointment.

Nevertheless, from a broader perspective, the institution of the episcopal vicars has to be understood in the context of the preoccupation of Vatican Council II with adjusting pastoral structures to the needs of the faithful. The Council could have thus offered several new and more flexible instruments for the development of the pastoral function of the diocesan bishop and for an administrative governance closer to the faithful. The episcopal vicar, incorporated into the juridical structure of the particular church, participates in a stable form—in contrast to the plain episcopal delegates—in the unfolding of the episcopal functions of governance. It is an office suited also for developing a pastoral practice more flexible and closer to the faithful because of its specialization in certain matters, people, or territories.

The experience of the years since the end of Vatican Council II shows that the incorporation of the episcopal vicar into the dioceses has turned out well. Specifically, it has worked for a better development of governmental *subsidiarity*: the bishop, on being relieved of the processing of matters that used to occupy a good part of his prior work, has more access to the faithful, greater possibilities for personal relationships, and a complete knowledge of the diocese.[2] The episcopal vicars, for their part, since they morally represent the person of the diocesan bishop, show episcopal solicitude in personal, material, or territorial contexts, attention to which was more problematic before their institution by the Council.

3. After these considerations regarding the origin, meaning, and purpose of the episcopal vicar in Vatican Council II, it is worthwhile to consider, already in the context of the *CIC*, the problem of the juridical relationship between the vicar general and the episcopal vicar. It is an

1. Cf. E. BOULARD, "La Curie et les Conseils diocésains," in *La Charge pastorale des Évêques* (Paris 1969), p. 245.
2. Cf. J. KURENBACH, "El Vicario episcopal. Aplicación de esta figura en España," in *Revista Española de Derecho Canónico* 35 (1979), pp. 520–521.

issue that authors emphasized as one of the principal problems presented by these canons.[3]

In effect, the problem stems from the fact that the possibilities of relationship between both offices are quite varied since one or several vicars general and one or several episcopal vicars can be constituted for the same diocese. The establishment of the office of the episcopal vicar makes unnecessary for most cases the appointment of several vicars general. Therefore, the canonical problem consists especially in specifying the principles of forming the relationships between the vicar general and the constituted episcopal vicars, though there will also be presented the problem regarding the relationship among several vicars general.[4]

One aspect that has to be kept in mind on this subject is that there is no canonical relationship of mutual hierarchical dependency between the episcopal vicars and the vicar general. In both cases, they are vicarial offices, subordinated only to the bishop. In this sense, there are no norms in the *CIC* that can justify a relationship of strict subordination of the episcopal vicars with respect to the vicar or vicars general. Nevertheless, it is permissible for particular law to establish a certain capacity for administrative direction recognized in favor of the vicar general to foster due coordination among the diocesan vicars. It is precisely the principle of coordination that is privileged by the *CIC* to give shape to the vicarial relationships. Thus a careful episcopal consideration must be given to the canons regarding the granting of graces by means of rescripts coming from different vicars (cf. c. 65); the recommendation contained in c. 480; the administrative coordination of the activity of the diocesan curia by the diocesan bishop, the Moderator of the curia, and the episcopal council (cf. c. 473). It is also important to evaluate the possibility envisioned in c. 479 § 2, where it is provided that the bishop can reserve to the vicar general before the episcopal vicar certain administrative contexts, or even attribute to the vicar general those acts that pursuant to the law require a special mandate from the bishop. (Cf. also c. 406 § 1 regarding the preferred attribution of the special mandate to the coadjutor bishop or auxiliary bishop with special faculties.)

Other principles for forming the juridical relationships between vicars general and episcopal vicars can be those of solidarity and collegiality as provided in c. 140 §§ 1 and 2. In the first case, vicarial solidarity implies that the vicar general who begins to act "would in the same matter ex-

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3. E.g., W. AYMANS, "Die Leitung der Teilkirche," in *Le nouveau Code de Droit Canonique, Actes du Ve Congrès international de Droit canonique*, II (Ottawa 1986), p. 601; I.C. IBÁN PÉREZ, *Organización diocesana y reforma del Codex Iuris Canonici: un ejemplo, la diócesis Asidonense-Jerezana (Jerez de la Frontera)*, ibid., p. 652; CH. TORPEY, "Offices of the diocesan curia. Interrelationships and creative possibilities," in *Canon Law Society of America. Proceedings of the forty-fifth annual Convention* (Washington 1984), p. 116.

4. Cf. in general, A. VIANA, "Las relaciones jurídicas entre el Vicario general y los Vicarios episcopales," in *Revista Española de Derecho Canónico* 45 (1988), pp. 251–260.

clude the others from acting, unless that person is subsequently impeded, or does not wish to proceed further with the matter" (c. 140 § 1). In the second case, by reference to c. 119 contained in c. 140 § 2, the diocesan vicars would constitute a college, adopting its decisions jointly by majority vote. Nevertheless, these solutions present legal obstacles difficult to overcome because c. 140 does not refer to ordinary power, but to the exercise of delegated power. Moreover, the solidarity envisioned in c. 140 §1 expresses a simple criterion of chronological preventions that does not offer sufficient certainty and would, in contrast, present difficulties for those intended to be affected by vicarial acts. Last, the possibility that governance be a vicarial collegial rule is detrimental to the autonomy and responsibility necessary in the exercise of ordinary power and can also cause various practical problems (insertion of the new college into the diocesan structure, complexity perhaps unnecessary in the organization of the curia, delays likewise unnecessary in the processing of administrative acts, etc.). In my judgment, neither should the figure of the episcopal council of c. 473 § 4 be cited to justify a college of vicars because that organization lacks the power to make decisions *ad extra*[5] and only serves the internal coordination within the curia upon the formal accomplishment of the provisions of c. 480.

Possibly the best solution on this subject might consist in a determination of the *competence* of the vicarial offices by the bishop with due advisement. In effect, these canons regarding the vicar general and the episcopal vicar need a subsequent development of the regulations by particular law so that they can be appropriately applied to the diocesan situation. The first determination logically would refer to the appropriate number of vicarial offices according to pastoral needs. In the second place is the problem of determining tasks, the *scope of competence* of each diocesan vicar.

The relationship between the vicar general and the episcopal vicars can be respectively conceptualized in accordance with the binomial general competence–special competence. The reason is clear: there is no diversity regarding the *nature* of the power that is exercised in both cases since it is participation *vi officii* in the executive power that corresponds to the bishop (vicarious power). What does exist is a real diversity referring to the respective *reach* or possibilities of exercising the power. Competence is different, the measure of jurisdiction attributed by right—through appointment—to each vicarial office in the administrative context.

The possibilities of action by the office of vicar general cover, within legal boundaries, all administrative subjects, the entire diocesan territory, and all the faithful of the diocese (general competence). In contrast, the competence of the episcopal vicars is circumscribed or delimited accord-

5. Cf. J. SÁNCHEZ Y SÁNCHEZ, commentary on c. 473, in *Salamanca Com.*

ing to the criteria of specialization envisioned in Vatican Council II, post-conciliar legislation, and the *CIC*: functional or material, personal or territorial. Therefore each episcopal vicar has legally attributed to him a special competence in relation to the other diocesan vicars.

4. The appointment of the episcopal vicar must be the most precise possible regarding his competence. In general is important to exclude here incomplete solutions, for example, the appointment of *pastoral Vicars* without subsequent determinations. The territorial criterion is the one that offers in principle greater certainty: in the practice of many countries there are frequently episcopal vicars for different diocesan areas and circumscriptions. Nevertheless, the territorial criterion must not be considered exclusive because it has the effect of multiplying concurrent competences over a common territory, and further, it is less suitable for the promotion of specialized tasks and apostolates. Keeping in mind the prior considerations, on occasion the functional criterion turns out to be especially useful and clarifying, and from which comes a redistribution or assignation of tasks *ratione materiae* among the different vicarial offices: instruction, parishes, artistic patrimony, diocesan curia, associations, etc. At the same time this does not exclude the validity of a personal criterion, since the episcopal vicar appointed to assist emigrants, faithful of a certain rite, religious, etc., will also be functionally competent in relation to these groups of faithful.

5. With respect to the method of attributing competence to the vicars by particular law, it must be done, in our opinion, with an exclusive character, at least in principle. In this way, with the constant exception of power properly episcopal and the exceptions that opportunely might be established, each vicar and only such vicar will be competent in that bloc of subjects or relationships indicated in the act of appointment. A similar solution is not opposed to the collaboration of the diocesan vicars among themselves and with the diocesan prelate—which always can and should be given—and do not present problems when it is only a matter of relationships between episcopal vicars. Perhaps it might produce greater reservation when it passes to the plane of the relationships between episcopal vicars and the vicar general. Still, the special competence of an episcopal vicar will have to prevail where there is doubt regarding the competence of the vicar general. It must not be forgotten, in effect, that hierarchical subordination of diocesan bishops does not exist by itself between both offices but does constitute, in contrast, a classical principle of canonical legislation, *generi per speciem derogatur*,[6] whose application to the exercise of executive power presents no problem. Thus c. 53 affirms it indirectly, according to which "if decrees are contrary one to another, where specific matters are expressed, the specific prevails over the gen-

6. *VI* V, *de Regulis iuris*, 34.

eral"; and likewise, c. 67 § 1 regarding rescripts contradictory between themselves.

This solution does not empty the office of vicar general of content, the *officium eminens* in the diocesan curia (*CD* 27). We must remember that this office is of preceptive constitution in the diocese, while the episcopal vicars are facultative in the dioceses; therefore, when one or several episcopal vicars are constituted it already implies the need to alleviate the tasks proper to that office by entrusting their development to these new offices. On the other hand, there is always the possibility that the bishop reserves to the favor of the vicar general the recognition of a certain matter, or attributes preferentially the processing of those matters that by law require a special mandate. Moreover, with the proposed solution (prevalence of the special competence of the episcopal vicars) the vicar general does not lose his general administrative power; its exercise is simply frozen in favor of the competent episcopal vicar over the same case in fact. Since the appointment of the episcopal vicar is *ad tempus,* once the period of his appointment has run, the vicar general recovers *in actu* his general competence; that is, the special competence of the episcopal vicar partially and temporarily repeals the competence corresponding to the vicar general, but does not extinguish it.

Let us remember, especially, that the genuine virtuality of the episcopal vicars in the context of the doctrine of Vatican Council II consists, in the end, in a more flexible, closer, and effective assistance of governance and diocesan pastoral activity. That greater *closeness* of the episcopal vicars to the faithful, for their specializations, advises the preference of their special power in doubtful cases.

477 **§ 1. Vicarius generalis et episcopalis libere ab Episcopo dioecesano nominantur et ab ipso libere removeri possunt, firmo praescripto can. 406; Vicarius episcopalis, qui non sit Episcopus auxiliaris nominetur tantum ad tempus, in ipso constitutionis actu determinandum.**

§ 2. Vicario generali absente vel legitime impedito, Episcopus dioecesanus alium nominare potest, qui eius vices suppleat eadem norma applicatur pro Vicario episcopali.

§ 1. The Vicar general and the episcopal Vicar are freely appointed by the diocesan Bishop, and can be freely removed by him, without prejudice to can. 406. An episcopal Vicar who is not an auxiliary Bishop, is to be appointed for a period of time, which is to be specified in the act of appointment.

§ 2. If the Vicar general is absent or lawfully impeded, the diocesan Bishop can appoint another to take his place. The same norm applies in the case of an episcopal Vicar.

SOURCES: § 1: c. 366 § 2; *ES* I, 14 §§ 2 et 5
§ 2: c. 366 § 3; *ES* I, 14 § 2

CROSS REFERENCES: cc. 193, 406, 470, 481 § 1

COMMENTARY

Antonio Viana

This canon regulates the aspects relative to the appointment, removal, and substitution of the vicar general and episcopal vicar. Several determinations are established for the cases in which the vicarial offices are performed by coadjutor and auxiliary bishops.

1. The appointment of the vicar general is carried out under current law in conformance with canonical traditions through a system of free conferral and likewise for the episcopal vicar. Consistent with the provisions of c. 157 and especially those of c. 470, the selection and appointment of the candidates is within the exclusive and personal competence of the diocesan bishop.

An important difference between the vicar general and the episcopal vicar stated in c. 447 § 1 is that when the episcopal vicar is not also the

auxiliary bishop, he must be appointed for a fixed time. The expression of the canon ("nominetur tantum ad tempus, in ipso constitutionis actu determinandum") appears to incorporate a disqualifying phrase for an appointment without a time limit. Hence, the determination of a time period for the one appointed episcopal vicar is not left to the "prudent discretion of the authority" (cf. c. 193 § 3), but must be stated in the appointment itself. Logically, this time provision does not exclude successive temporary appointments as episcopal vicar in favor of the same person. For his part, the vicar general is always appointed indefinitely: this is the canonical tradition and is thus also stated by c. 477 § 1, which only states a term for the appointment of episcopal vicar.

While keeping in mind the importance of particular law in the development of these canons, a problem is presented—suggested also by the practice in several dioceses—of whether episcopal appointment is compatible with the participation of other faithful in the procedure prior to the collation of the office. Naturally, nothing impedes the bishop from duly seeking advice before appointing the vicar general or the episcopal vicar. On the contrary, this is a very important part of selecting suitable candidates. However, there should be excluded here, in our opinion, the substitution of free conferral as a canonical system of appointment by other procedures, as can be the case in election or presentation (cf. c. 164ff., 158ff.) on the part of the presbyteral council or other representatives of the diocesan presbyterate, even though the confirmation or institution of the candidate is reserved to the diocesan bishop. The bishop cares for the diocese with the necessary cooperation of the presbyterate (cf. *CD* 11 and c. 369), but from that it should not be concluded the bishop's obligation and need for the participation of the diocesan presbyterate in the selection of the vicarial offices. The reason is that the offices of vicar general and episcopal vicar are precisely vicarial offices that act in a participatory and subordinate fashion in the same *episcopal* power. Thus they are configured as offices of special confidence of the bishop, his closest collaborators in diocesan governance. Therefore, although other appointing systems could theoretically fit in, it is very important to reserve to the bishop himself the selection and free conferral of his vicars, who are not immediate representatives of the diocesan presbyterate. In this sense it is fitting to observe that c. 477 § 1 does not contain any express reference to the particular law, as it does for example, in the case of archpriests, who are named by the bishop "unless it is otherwise prescribed by particular law" (c. 553 § 2). The only exception to the appointment of the vicars by the bishop personally that would be permitted by c. 477 § 1 would be, in our opinion, the participation of the vicar general or episcopal vicar who is opportunely authorized by means of a special mandate pursuant to c. 134 § 3. But this last possibility, besides implying a relinquishing of responsibility on the part of the bishop (against the motivating spirit of c. 477 § 1) would seem to be absolutely artificial, for it would be difficult

to justify that extremely unusual subordination that would result from the appointment of one vicar by another vicar.

2. Likewise, the removal of the vicar general and the episcopal vicar is free and corresponds personally to the bishop by decree (cf. c. 477 § 1, in relation to c. 192). Since there does not exist a special procedure stated by the law to proceed to remove holders of vicarial offices (given their nature of being close collaborators with the capital office), and since the canon expressly states the freedom of the bishop, a just and sufficient cause will be enough for removal. In the case of an episcopal vicar who must be removed before his time of appointment is up, a grave cause would also be necessary (cf. c. 193 § 2), something more that the simple loss of confidence, for example. Notification of removal by the bishop constitutes one of the causes that produce cessation of the power of the vicar general and episcopal vicar (cf. c. 481 § 1).

3. Both the appointment and removal of the vicar general and episcopal vicar present several peculiarities when these offices are performed by coadjutor and auxiliary bishops. Pursuant to the *CIC*, the coadjutor and auxiliary bishop endowed with special faculties envisioned in c. 403 § 2 must be appointed vicars general by the diocesan bishop (c. 406 § 1). Moreover, without prejudice to the preceding provision and unless it has been otherwise established in the apostolic letters of appointment, the diocesan bishop must also appoint the auxiliary bishop or auxiliary bishops as vicars general or at least as episcopal vicars (c. 406 § 2). The reason for these obligations imposed on the diocesan bishop must be sought in the importance expressed by Vatican Council II in which the coadjutor and auxiliary bishops were endowed with important faculties in the diocese, but always excepting the unity of particular governance (cf. *CD* 25). What is important to consider here is that, referring to coadjutor and auxiliary bishops, the general principle of free removal from the offices of vicar general and episcopal vicar does not apply, and likewise the norm of c. 477 § 1 regarding the temporary appointment of the episcopal vicar does not apply.

4. Finally, c. 477 § 1 empowers the diocesan bishop to appoint a substitute for the vicar general or episcopal vicar whenever they are lawfully absent or impeded. This possibility is not always easy to carry out, especially in the case of several episcopal vicars in the same diocese. The basis of this determination consists both in the need of the bishop to have stable collaborators in the administrative governance of the diocese and likewise in the needs of the faithful intended to be affected by the activity of the diocesan vicars.

478 **§ 1. Vicarius generalis et episcopalis sint sacerdotes annos nati non minus triginta, in iure canonico aut theologia doctores vel licentiati vel saltem in iisdem disciplinis vere periti, sana doctrina, probitate, prudentia ac rerum gerendarum experientia commendati.**

§ 2. Vicarii generalis et episcopalis munus componi non potest cum munere canonici paenitentiarii, neque committi consanguineis Episcopi usque ad quartum gradum.

§ 1. The Vicar general and the episcopal Vicar are to be priests of not less than thirty years of age, with a doctorate or licentiate in canon law or theology, or at least well versed in these disciplines. They are to be known for their sound doctrine, integrity, prudence and practical experience.

§ 2. The office of Vicar general or episcopal Vicar may not be united with the office of canon penitentiary, nor may the office be given to blood relations of the Bishop up to the fourth degree.

SOURCES: § 1: c. 367 § 1; *ES* I, 14 § 2; *DPMB* 201
§ 2: c. 367 § 3; *ES* I, 14 § 2

CROSS REFERENCES: cc. 274 § 1, 508 § 1

COMMENTARY

Antonio Viana

Canon 478 establishes the personal conditions for the offices of vicar general and episcopal vicar, as well as legal conflicts for holding both offices.

The *CIC*/1917 required in its c. 367 § 1 that the appointment of vicar general fall to a secular cleric unless it was a diocese *alicui religioni commissa*, in which case the vicar general could belong to the regular clergy (cf. c. 367 § 2 *CIC*/1917). Presently the law does not incorporate this restrictive formulation, so as to broaden the possibilities in selection of candidates.

Canon 478 § 1 requires a member of the ministerial priesthood—presbyterate or episcopate—to hold vicarial offices. This requirement is not due to the configuration of the vicar general or episcopal vicar as offices with care of souls since the exercise of holy orders or the ministry of the Word or sacraments is not necessarily among the functions proper to

diocesan vicars. The requirement of priesthood is rather a consequence of the provisions of c. 274 § 1 that reserves to clerics ("soli clerici obtinere possunt") the offices for whose exercise is required power of order or power of ecclesiastical governance.

The doctrine has presented *lege ferenda* the possibility that a faithful member not ordained *in sacris* or a deacon may be appointed as vicar general or episcopal vicar (e.g., the case of a faithful belonging to an institute of consecrated life or a society of apostolic life as episcopal vicar for the religious of the diocese).[1] In favor of this theoretical possibility is the fact already stated that the functions of the vicar general or episcopal vicar do not require by themselves the exercise of holy orders. Likewise it can be stated that the vicarial power of governance derives canonically from the hierarchy or, to be more precise, from the law through the appointment made by the capital office. The reason consists in that vicarial power is exercised in another's name and always implies the existence of a capital office in whose power the holder of the vicarial office participates.

Nevertheless, a joint interpretation of cc. 274 § 1 and 478 § 1 leads to the conclusion that the hypothetical appointment of a deacon or a lay member as vicar general or episcopal vicar would be invalid. It does not seem that we are facing a requirement that is excusable by particular law but, in contrast, we are faced with a constitutive element of such offices pursuant to universal law (cf. c. 86). Likewise, it would not be, in our judgment, a wise practice to avoid the condition of c. 478 § 1 through the attribution of vicarial functions of governance to the chancellor or the diocesan curia by citing thereby reference to the particular law that is contained in c. 482 § 1. The chancellor of the curia is an office clearly differentiated from the offices of vicar general and episcopal vicar.

The remaining conditions contained in c. 478 § 2 intend to avoid, on one hand, the danger of confusion between the activity of governance in the internal forum and the external forum, which could happen in the case of the canon penitentiary (cf. c. 508 § 1) being appointed vicar general or episcopal vicar. On the other hand, the second prohibition established in c. 478 § 2 promotes the right intention of the bishop in appointing his vicars by providing a guarantee against any temptation to *nepotism*. Obviously, these legal conflicts do not exclude that the offices of vicar general and episcopal vicar can be performed by priests who are already holders of other offices, including those with care of souls. In this sense, the *CIC* does not include the norm contained in c. 367 § 3 of the *CIC*/1917, pursuant to which the office of vicar general cannot be entrusted, except in case of necessity, to a parish priest or other holders of offices with care of souls.

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1. Cf. A. GUTIÉRREZ, "An mulieres possint esse 'Vicarii episcopales'," in *Commentarium pro religiosis et missionariis* 60 (1979), pp. 201–210.

479 **§ 1. Vicario generali, vi officii, in universa dioecesi competit potestas exsecutiva quae ad Episcopum dioecesanum iure pertinet, ad ponendos scilicet omnes actus administrativos, iis tamen exceptis quos Episcopus sibi reservaverit vel qui ex iure requirant speciale Episcopi mandatum.**

§ 2. Vicario episcopali ipso iure eadem competit potestas de qua in § 1, sed quoad determinatam territorii partem aut negotiorum genus aut fideles determinati ritus vel coetus tantum pro quibus constitutus est, iis causis exceptis quas Episcopus sibi aut Vicario generali reservaverit, aut quae ex iure requirunt speciale Episcopi mandatum.

§ 3. Ad Vicarium generalem atque ad Vicarium episcopalem, intra ambitum eorum competentiae, pertinent etiam facultates habituales ab Apostolica Sede Episcopo concessae, necnon rescriptorum exsecutio, nisi aliud expresse cautum fuerit aut electa fuerit industria personae Episcopi dioecesani.

§ 1. In virtue of his office, the Vicar general has the same executive power throughout the whole diocese as that which belongs by law to the diocesan Bishop: that is, he can perform all administrative acts, with the exception however of those which the Bishop has reserved to himself, or which by law require a special mandate of the Bishop.

§ 2. By virtue of the law itself, the episcopal Vicar has the same power as that mentioned in § 1, but only for the determined part of the territory or type of activity, or for the faithful of the determined rite or group, for which he was appointed; matters which the Bishop reserves to himself or to the Vicar general, or which by law require a special mandate of the Bishop, are excepted.

§ 3. Within the limits of their competence, the Vicar general and the episcopal Vicar have also those habitual faculties which the Apostolic See has granted to the Bishop. They may also execute rescripts, unless it is expressly provided otherwise, or unless the execution was entrusted to the Bishop on a personal basis.

SOURCES: § 1: c. 368 § 1
§ 2: *ES* I, 14 § 2
§ 3: c. 368 § 2; *ES* I, 14 § 2

CROSS REFERENCES: cc. 59, 65, 132 § 1, 134 § 3, 391, 406 § 1, 475, 476, 1732ff

COMMENTARY

Antonio Viana

1. As Lombardía said regarding the distinction of functions in the work of governance, "throughout the entire Code one notices a desire for terminological precision in this matter, by avoiding generic words—like 'superior', so frequently used by the Code of 1917—and by specifying in many texts whether legislative, executive, and judicial power is necessary for certain acts."[1] This desire for terminological precision was the fruit of the positive interest manifested in the preparatory works of the *CIC* in the due development of the directive principle no. 1 approved by the Synod of 1967 ("in renovando iure indoles iuridica novi Codicis, quam postulat ipsa natura socialis Ecclesiae, omnino retinenda est ...": cf. *CIC Praefatio*), upon understanding that the juridical nature of the new Code required precision and certainty in the employment of terms.

Canon 479 is the fruit of this approach because it describes the nature, scope, and range of the power of the vicar general and episcopal vicar with much more precision than c. 368 of the *CIC*/1917, and it formulates at the same time the episcopal control over the exercise of vicarious power. Such are, in effect, the two great questions that c. 475 sets out in its three paragraphs.

2. With respect to the first issue, that is, the nature, scope, and range of the power of the vicar general and episcopal vicar, c. 479 specifies the principles established in cc. 475 and 476 (see the respective commentaries). It is confirmed here that such power is ordinary ("vi officii") vicarious ("potestas ... quae ad Episcopum dioecesanum iure pertinet"), administrative or executive ("potestas exsecutiva ..., ad ponendos scilicet omnes actus administrativos"). In the case of the vicar general, it deals, moreover, with a power of general scope ("in universa dioecesi competit"), while the scope of the power of the episcopal vicar is special ("quoad determinatam territorii partem aut negotiorum genus aut fideles determinati ritus vel coetus").

Naturally these determinations must be framed hermeneutically in the context of the principle of distinction of functions of diocesan governance formulated by cc. 135 and 391 (see commentary on cc. 472 and 475). The *CIC* formally excludes the participation of the vicars general and episcopal vicars as such in legislative power and judicial power in the particular context. In contrast, it expressly emphasizes the connection of both

1. Cf. P. Lombardía, "Técnica jurídica del nuevo Código," in *Temas fundamentales en el nuevo Código* (Salamanca 1984), p. 163.

offices with the possession and exercise of executive power in the diocese.

Canon 479 § 3 recognizes the competence of the diocesan vicars regarding the habitual faculties granted by the Holy See to the bishop (cf. c. 132), as well as the execution of apostolic rescripts, with the exceptions provided in the canon itself. It is a matter of specifying vicarious executive power in accordance with the provisions of c. 368 § 2 of the *CIC*/1917. Nevertheless, the absence of subsequent corrections in c. 479 presents the problem of whether the administrative competence of the diocesan vicars reaches only the administrative acts of an individual character (individual decrees and precepts, rescripts, privileges and dispensations: cf. tit. IV of book I) or if it also includes the possible issuance of general administrative acts and executive normative acts. The response is clearly affirmative, while keeping in mind the broad formulation of c. 469 § 1 ("ad ponendos scilicet omnes actus administrativos") with the only exception the reservation and special mandate. Both the vicar general, and also the episcopal vicar within his special scope, have, therefore, a juridically recognized broad capacity to work in the diocesan administrative context, while always informing the bishop of the most important matters to be resolved or that have already been resolved and while endeavoring to identify with the will and intentions of the prelate of the diocese (cf. c. 480). It falls to them, therefore, the power to publish general executory decrees (c. 31) and instructions (c. 34).

These possibilities of action recognized for the diocesan vicars must be developed with a sense of responsibility. In particular, it is necessary that the administrative acts of the vicar general and episcopal vicar do not unnecessarily compromise the diocesan pastor and that they externally appear to be vicarious acts—that is, fully attributable to their author—and not as capital acts, as if they had been done by the bishop personally. In this sense, it is not necessary or important that the bishop endorse with his signature the general or particular administrative acts of a vicar general or episcopal vicar. This hypothetical control, besides confusing in its exercise the power of the bishop with that of his vicars (by presenting the problem of authorship of the act in question), is absolutely unnecessary because there are already various controls over the vicarious activity prior to the act (prior reports, the possibility of reservation by episcopal mandate) expressly contemplated by cc. 479 § 1 and 480. The formal distinction between vicarial administrative acts and episcopal acts promotes, in contrast, a more orderly and efficient governance, excepting the authority of the diocesan bishop. It also promotes the responsible initiative of his vicars, and fosters, lastly, the tutelary possibilities opened by the canonical system in favor of the faithful member or members who might be considered damaged by an act or acts done by the diocesan vicars. In this sense it must be kept in mind that the individual administrative acts issued by a vicar general or episcopal vicar can be appealed to the diocesan

bishop (cf. cc. 1732ff), who can, at the same time, revoke, reform, substitute, or abrogate them (cf. c. 1739).

3. Having considered the reach of the power of the vicar general and episcopal vicar pursuant to c. 479, we must assess the second aspect regulated by the present canon, namely, the episcopal control over the exercise of vicarious power.

To understand this issue properly it is necessary to keep in mind that vicarious power constitutes an institution that, being compatible with genuine distinction of powers in the practice of governance, is not, in contrast, reconcilable with the division or separation of the one episcopal power. That is to say, the participation in capital power recognized by the law for vicarious offices does not cause a break between the holding of power and its effective exercise such that it is always possible for the bishop to exercise power personally. The reason is clear: the bishop in the diocese has personal power proper to the office (cf. c. 381 § 1), and its exercise reaches both the legislative context and the executive context, even the judicial (cf. c. 391 § 1). The diocesan vicars, for their part, partake by virtue of law and office of the same administrative or judicial power that originates in the bishop. It is important, in effect, to emphasize this aspect: it is same episcopal administrative power that corresponds to the vicars general and episcopal vicars (cf. c. 391 § 2 and the following expression of c. 479 § 1: "potestas executive quae ad Episcopum dioecesanum iure pertinet"). They are not naturally separated powers although they might be organized and exercised in a different way according to the styles of the bishop or his vicar, and always in a context of distinction of functions.

Starting from this prior approach, the importance of the juridical instruments at the service of the unity of diocesan power is understood some canonical channels that might permit personal exercise of administrative power by the bishop and also direct control of vicarious administrative power in the most important cases. These canonical instruments are, respectively, the reservation and the special mandate. They are two traditional canonical figures already provided for in c. 368 § 1 of the *CIC*/1917 regarding the vicar general.

a) The *power of episcopal reservation* bears on the exercise of the power of the vicar general and episcopal vicar and is expressly provided for in c. 479 §§ 1 and 2. It is a faculty recognized by the law in favor of the bishop and can be formalized in particular law or through an administrative act (e.g., in the appointment of vicars). By virtue of the power of episcopal reservation, the administrative competence of the vicar general or episcopal vicar is diminished for certain acts or contexts of subject matter, territory, or of a personal nature whose exercise or treatment is assumed personally by the diocesan bishop. The reservation always implies, therefore, a concentration of administrative power in the person of the bishop and in a parallel manner the diminution of the competence of the vicarial office.

It can be observed that the *CIC* does not regulate the conditions, form, exercise, or limits of the power of episcopal reservations. The only aspect that is regulated is the possibility that the bishop might not personally assume the exercise of reserved administrative competence when it concerns the episcopal vicar. In this case c. 479 § 2 allows the reservation that the bishop makes to be in favor of the vicar general. Nevertheless, although the exercise of the reservation is not regulated in the *CIC*, the discretion of the bishop on this subject cannot empty the vicarial office of competence,[2] which is determined by the universal law. It is important, moreover, that it be formalized in writing; naturally, it must be communicated to the vicar; and likewise it is important that the act of reservation be published opportunely so as to be made known to the interested faithful.

b) For its part, the *special mandate* also bears on the exercise of vicarial administrative power. But, in contrast to what occurs with the reservation, the special mandate broadens the exercise of vicarial power in specific cases. It is also a canonical instrument at the service of the unity of episcopal power because it requires the assessment of its use by the bishop before being granted. We will look briefly at the aspects relative to the nature, cases, and forms of the special mandate.

The special mandate is an administrative act of the bishop that attributes competence to the vicar general or episcopal vicar to act in administrative cases that the universal law expressly refers to the diocesan bishop. It is a very old canonical figure, recognized by classical law. Thus the *Liber Sextus* of Boniface VIII contained the following principle: "Qui generaliter constituitur ad negotia procurator, agere ac experiri potest, exceptis his casibus, qui mandatum exigunt speciale."[3]

To better understand the meaning of this canonical figure applied to vicarial administrative power, it is important to keep in mind that within the administrative context are cases of singular emphasis or importance, like, for example, the dispensation of disciplinary laws (c. 87 § 1); the provision for ecclesiastical offices in the particular church (c. 157), especially the provision referring to the "superior, governance, and administration of the Seminary" (c. 259 § 1); the provision to incardinate clerics (c. 269); the establishment of public associations of the faithful (c. 312 § 1,3°); etc. All these cases of special importance (the *negotia ardua, maiora seu graviora,* mentioned by the former canonists) are reserved by the universal law to the diocesan bishop. Nevertheless, keeping in mind that they are administrative acts, the universal law also permits the possibility that they can be carried out by the vicar general and episcopal vicar by their being previously authorized through a special mandate from the bishop.

2. Cf., for *CIC*/1917, F.X. WERNZ-P. VIDAL, *Ius Canonicum*, II, 3rd ed. (Rome 1943), p. 810.
3. Cf. *VI* I, 19, 5.

The formulation of the special mandate in the *CIC* is different from the *CIC*/1917. In the context of the *CIC*/1917 various cases were enumerated whose administration was prohibited to the vicar general without a special mandate of the bishop. Presently, c. 134 § 3 provides, in contrast, that "whatever in the canons, in the context of executive power, is attributed to the diocesan bishop, is understood to belong only to the diocesan bishop and to those others in can. 381 § 2 who are equivalent to him, to the exclusion of the Vicar general and the episcopal Vicar except by special mandate." There are approximately one hundred administrative cases[4] in which the *CIC* expressly mentions the diocesan bishop and that require therefore a special mandate for the vicar general or episcopal vicar to act lawfully.

In the context of the *CIC*/1917, a very controverted question was the nature of the power of the vicar general with a special mandate, specifically whether he acted in such case with ordinary or delegated power. In the first case, the granting of a special mandate simply implied permission of the vicar to exercise a power already connected to the office by the law, but its exercise was conditioned on the prior granting of the mandate by the bishop. In the second case, the special mandate would equal a genuine attribution of power by the bishop to the vicar that would result in his being authorized to act in cases excluded by the law, which was common to the scope of the competence of the vicarial office. In the perspective of the current legislation there is no lack of doctrinal opinions in favor of the ordinary power of the vicar general or episcopal vicar with a special mandate.[5] Nevertheless, another doctrinal sector[6] has defended—in our judgment with stronger arguments—the equivalence between the special mandate and delegated power. The latter, in effect, is a solution in conformance with the historical law and with the current legislation. In particular, c. 134 cited above clearly reinforces the thesis of delegation because it distinguishes between the configuration of the diocesan vicars as ordinaries and local ordinaries (c. 134 §§ 1 and 2) and the power that corresponds to them as agents of the bishop (c. 134 § 3). Canon 134 § 3—which constitutes a norm not found in the *CIC*/1917—states, moreover, that the cases that require a special mandate are left exclusively to the diocesan bishop ("intelleguntur competere dumtaxat Episcopo dioecesano"). Thus, they cannot be considered included in the scope of competences connected by the law to the offices of vicar general or episcopal vicar without prejudice in the *exercise* of such cases to their being able to collaborate as agents, that is, delegates, of the bishop. In any case, it is clear that without a special mandate neither the vicar general nor the

4. Cf. H. MÜLLER, "De speciali Episcopi mandato iuxta CIC 1983," in *Periodica* 79 (1990), especially pp. 229–234.
5. Cf. J. SÁNCHEZ Y SÁNCHEZ, commentary on c. 479, in *Salamanca Com.*
6. Cf. H. MÜLLER, *De speciali*..., cit., pp. 236ff.

episcopal vicar can lawfully act[7] in the administrative cases expressly attributed to the diocesan bishop.

Regarding the form of the special mandate, its own nature requires that it be issued in writing since otherwise it would be difficult to prove its existence (cf. c. 131 § 3). Moreover, if it does not expressly state the granting of the mandate, there would be a presumption of invalidity pursuant to c. 134 § 3. In practice, the granting of a special mandate is frequently published in the same act of appointment of the vicar general or episcopal vicar and it is formulated for all the cases where it is required pursuant to the law.[8]This practice, which is understandable for the most extensive dioceses or those with a number of administrative cases so high that personal resolution by the bishop would be difficult, does not cease presenting theoretical questions given the practical conversion of the special mandate into a general mandate. It would be better for the special mandate to be granted *ad casum* by the bishop after a careful assessment of the case at hand.

Last, it is important to have in mind here the provision contained in c. 406 § 1, which establishes the duty of the diocesan bishop to entrust special faculties to the coadjutor and auxiliary bishops ahead of the diocesan vicars, which by prescription of the law might require a special mandate.

7. Cf. R. NAZ, "Mandat," in *Dictionnaire de Droit Canonique* VI (1957), col. 716; T.D. DOUGHERTY, *The Vicar General of the Episcopal Ordinary* (Washington 1966), pp. 67 and 93.

8. Cf., e.g., the decree of the Archbishop of Barcelona on December 31, 1987 regarding the determination of the competencies of the Vicars general of the archdiocese, published in *Butlletí de l'Arquebisbat de Barcelona* 128 (1987), pp. 12 and 13.

480 **Vicarius generalis et Vicarius episcopalis de praecipuis negotiis et gerendis et gestis Episcopo dioecesano referre debent, nec umquam contra voluntatem et mentem Episcopi dioecesani agant.**

The Vicar general and episcopal Vicar must give a report to the diocesan Bishop concerning more important matters, both those yet to be attended to and those already dealt with. They are never to act against the will and mind of the diocesan Bishop.

SOURCES: c. 369 §§ 1 et 2; *ES* I, 14 § 3; *DPMB* 202

CROSS REFERENCES: cc. 65, 406 § 2, 407, 473

COMMENTARY

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Canon 480 states what we could denominate as an internal instruction contained in the universal law and directed to the diocesan vicars to promote unity and coordination in administrative activity. Its content is similar to the provisions of c. 407 regarding the relationship between the diocesan bishop and the coadjutor and auxiliary bishops.

There are two obligations imposed on the vicars. The first is of a positive character and consists in the duty of informing the bishop before and after the undertaking of more important matters. The second is negative: never to act contrary to the will and intentions of the diocesan bishop. Nevertheless, there would not be derived from the hypothetical breach of these obligations the invalidity or ineffectiveness of an act as long as the conditions of cc. 124ff. regarding the validity of juridical acts have been met, and without prejudice to, naturally, the bishop's subsequent holding responsible the vicar who omitted to report or acted against his will. In the gravest cases, the breach of these obligations would imply a sufficient cause for removal from office.

Regarding the duty to report, it must be kept in mind here the provision for the episcopal council in c. 473 § 4. This council will be the most appropriate channel for the fulfillment of that duty, where it has been constituted. Likewise the content of c. 65 must be assessed here because the basis of the cautions provided for in c. 480 is precisely the need to coordinate the activity of several competent ordinaries in the administrative context.

The negative obligation consistent with not acting contrary to the will and intention of the diocesan bishop can be considered, on the other hand, as an exhortation directed to the vicars so that they look for and obtain in practice unity with the diocesan pastor for the good of all the faithful. Logically, this necessary communion does not exclude the accompanying necessary autonomy and responsibility of the diocesan vicars when acting within the scope of competency that the law states.

Canon 480, considered in its entirety, reinforces the configuration of the vicars general and episcopal vicars as offices hierarchically subordinated to diocesan bishop. The basis of this hierarchical subordination consists in the position of the bishop as the head of the diocese and in the participatory character of vicarious power. Therefore, the content of c. 406 § 2 *in fine* still presents several questions, which make it possible that the auxiliary bishop appointed as vicar general or episcopal vicar to depend not immediately on the diocesan bishop, but on the coadjutor bishop or auxiliary bishop with special faculties.

481 **§ 1. Exspirat potestas Vicarii generalis et Vicarii episcopalis expleto tempore mandati, renuntiatione, itemque, salvis cann. 406 et 409, remotione eisdem ab Episcopo dioecesano intimata, atque sedis episcopalis vacatione.**

§ 2. Suspenso munere Episcopi dioecesani, suspenditur potestas Vicarii generalis et Vicarii episcopalis, nisi episcopali dignitate aucti sint.

§ 1. The power of the Vicar general or episcopal Vicar ceases when the period of their mandate expires, or by resignation. In addition, but without prejudice to cann. 406 and 409, it ceases when they are notified of their removal by the diocesan Bishop, or when the episcopal see falls vacant.

§ 2. When the office of the diocesan Bishop is suspended, the power of the Vicar general and of the episcopal Vicar is suspended, unless they are themselves bishops.

SOURCES: § 1: c. 371; *ES* I, 14 §§ 2 et 5
§ 2: c. 371; *ES* I, 14 § 2

CROSS REFERENCES: cc. 184 § 2, 187ff, 406, 409, 417, 477 § 1, 1333 § 1, 3°

COMMENTARY

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Canon 481 establishes the cases that can occasion the cessation or loss of the office of vicar general or episcopal vicar (§ 1, which employs the expression *"expirat potestas"* in contrast to the more precise terminology of *"officii amissio"* of cc. 184–186) and the suspension of such offices (§ 2). The differences between them consist in that *amissio* expresses the definitive cessation of title to the vicarious office, while suspension only concerns the exercise of the functions attached to the office, title to the office remaining unaffected.

The cases of cessation in office that c. 481 § 1 enumerates are resignation, expiration of the period of appointment, removal upon notification by the bishop, and when the episcopal see falls vacant. It should be remembered that the canon does not require the acceptance by the bishop of a vicar's resignation, in contrast to what the *CIC* provides in other cases (cf. cc. 367, 401–402, 538). The expiration of the term of office only con-

cerns the episcopal vicar who is not at the same time an auxiliary bishop (cf. c. 477 § 1). Removal by the diocesan bishop likewise does not affect the auxiliary and coadjutor bishops who would also be vicars general or episcopal vicars (cf. c. 477 § 1; see commentary). Regarding the situation of the see's falling vacant, the provisions regarding the cessation of vicars general and episcopal vicars—except when they are auxiliary bishops: cf. c. 409—constitute an exception already provided in c. 184 § 2 to the general rule that an ecclesiastical office is not lost upon the cessation of the authority that conferred it. It is important to have in mind the content of c. 417, which recognizes the validity of all the acts done by diocesan vicars until they have received certain notice of the death of the bishop or of the corresponding pontifical acts, in the case of the vacation of the episcopal see occasioned by causes other than death.

Suspension of the bishop in his office also causes the suspension of the exercise of the power attributed to the vicars general and episcopal vicars unless they are bishops (c. 481 § 2). In the criminal law, suspension consists in censure, which can only affect clerics and implies, among other canonical effects, the prohibition of the exercise of all or some rights or functions inherent in an office (cf. c. 1333 § 1, 3°). What the *CIC* regulates in c. 481 § 2 is suspension *ipso iure* of the exercise of vicarious power by virtue of the suspension of the bishop in his office.

ART. 2
De cancellario aliisque notariis et de archivis

ART. 2
The Chancellor, other Notaries and the Archives

482 **§ 1. In qualibet curia constituatur cancellarius, cuius praecipuum munus, nisi aliter iure particulari statuatur, est curare ut acta curiae redigantur et expediantur, atque eadem in curiae archivo custodiantur.**

§ 2. Si necesse videatur, cancellario dari potest adiutor, cui nomen sit vice-cancellarii.

§ 3. Cancellarius necnon vice-cancellarius sunt eo ipso notarii et secretarii curiae.

§ 1. In each curia a chancellor is to be appointed, whose principal office, unless particular Law states otherwise, is to ensure that the acts of the curia are drawn up and dispatched, and that they are kept safe in the archive of the curia.

§ 2. If it is considered necessary, the chancellor may be given an assistant, who is to be called the vice-chancellor.

§ 3. The chancellor and vice-chancellor are automatically notaries and secretaries of the curia.

SOURCES: § 1: c. 372 § 1
§ 2: c. 372 § 2
§ 3: c. 372 § 3

CROSS REFERENCES: cc. 474, 483–484, 486–491

COMMENTARY

Francesco Coccopalmerio

I. Some background regarding the redaction of cc. 482–494

It will be useful to indicate some points regarding the history of the drafting of cc. 482–492 before proceeding to the commentary on c. 482.

The competent *Coetus* for this subject was initially called "De clericis"; later (since 1968, *sess.* V) called "De Sacra Hierarchia." The names of the consultors are found in *Comm.* 1 (1969), p. 30; 5 (1973), p. 190. The account of the *sess.* I–XVIII is in *Comm.* 19 (1987), pp. 272–274. The *Coetus* "De Sacra Hierarchia" received the task of revising cc. 215–486 of the *CIC*/1917. Regarding cc. 482–494 of the *CIC*, the reference of the *CIC*/1917 is "De Curia dioecesana," cc. 363–390, among which are canons "De cancellario aliisque notariis et archivo episcopali" (372–384). The *Coetus* began the work relating to "De Curia dioecesana" in *sess.* VI (April 14–19, 1969), in which the general principles were written: cf. *Comm.* 24 (1992), pp. 31, 44–45.

We can follow the work of the *Coetus* in this manner:

— for sess. VI–XIII, in *Comm.* 24 (1992), pp. 32ff.;

— for sess. XIV–XVIII, in *Comm.* 25 (1993), pp. 49ff.

Between *sess.* VI and VII a text of the canons was prepared. The initial *Schemata* encompassed cc. 1–28. In *sess.* VII (February 2–9, 1970) the examination of those initial *Schemata* began cc. 1–28: cf. *Comm.* 24 (1992), pp. 57–67, 83–88. In sess. VIII (October 5–10, 1970) and in sess. IX (February 15–20, 1971) the texts were revised: cf. *Comm.* 24 (1992), pp. 92–95, 116–121, 128–129. In *sess.* XV (December 2–6, 1974) the *Coetus* revised the text for the last time: cf. Comm. 25 (1993), pp. 100–105, 116–121. There is also notice, although this time synthetic, of the works of the *Coetus* in *Comm.* 5 (1973), pp. 224–229.

In this manner we get the *Schema* 1977, cc. 281–308, where some modifications appeared regarding the initial *Schemata*. The canons were revised by the *Coetus* "De Populo Dei," in *sess.* 14 (April 16, 1980): cf. *Comm.* 13 (1981), pp. 111–128.

In the *Schema* 1980 the subject is found in cc. 389–414. In view of the Plenary Session of 1981 several observations were made, which are contained in the *Relatio* published in *Comm.* 14 (1982), pp. 212–214.

The *Schema* 1982 contains this material in cc. 469–494. As we comment on the different canons we will make specific references regarding the history of each one of the texts, obviously for exegetical purposes. We proceed now to the commentary on c. 482.

II. THE CHANCELLOR OF THE CURIA (§ 1)

1. *In qualibet curia constituatur cancellarius*: Therefore, it is an office of obligatory constitution in every curia.

2. *Cuius praecipuum munus ... est curare ut ...*: The expression *"praecipuum"* presupposes that the chancellor can perform many activities and at the same time establishes that the activity stated by the expression *"curare ... ut"*: (a) is the most important of all the functions that the chancellor could specifically have; and (b) it is, therefore, a necessary activity.

3. *Nisi aliter iure particulari statuatur*: This section does not appear for the first time until the *Schema* 1982, and an explanation of its presence is not found in *Communicationes*. The adverb *"aliter"* means, of itself, or "by a different manner." Therefore, particular law could provide "by a different manner" regarding the office of chancellor. Thus, the text could be reordered: "... cuius praecipuum munus, nisi diverso modo iure particulari statuatur, est curare ut..." This, in turn, would have as a consequence the chancellor's activity being indicated by the expression *"curare ut ..."*: (a) it is not the most important in the sense that the chancellor could perform other activities of greater importance; and (b) it is not a necessary activity in the sense that the chancellor could not even have that function.

But if that is the interpretation of the text, we have to ask ourselves why the Code wanted to provide for the principal activity of the chancellor. Would it not have been much simpler to refer everything to particular law? Nevertheless, this does not seem to be a reasonable interpretation. Therefore, the provision of the Code regarding the chancellor must be firm: the most important activity and, therefore, the most necessary activity, is *"curare ut..."* And therefore, particular law cannot provide *"aliter,"* in the sense of "by a different manner" to the provisions of the Code; that is, it cannot provide that the chancellor perform other activities, in the sense of different activities. It can provide, however, that he carry out other functions—meaning others besides the indicated functions.

Hence our conclusion: The expression "nisi aliter iure particular statuatur" must be interpreted by substituting it for the following: "inter alia quae ius particulare statuere potest."

4. *Curare ut acta curiae redigantur et expediantur, atque eadem in curiae archivo custodiantur.* In the initial *Schemata*, c. 15 § 1—cf. *Comm.* 24 (1992), pp. 59, 84–85, 93, 118—and in the *Schema* 1977, c. 295 § 1, there was added "ut ordine chronologico disponantur et de iisdem indicis tabula conficiatur," which was later suppressed by the *Coetus* "De Populo Dei," for the following reason: "To leave to the Bishop the freedom to choose the most appropriate method: chronologically, by subjects, etc."[1]

a) What does *acta curiae* mean? There is no doubt that it concerns "written acts," for thus it is easily deduced that the fact that the acts al-

1. Cf. *Comm.* 13 (1981), p. 121.

luded to *"rediguntur" "atque in archivo custodiuntur."* But, among so many of the written acts of the curia, does it mean all or only some?

Canon 474 provides: "Acta curiae quae effectum iuridicum habere nata sunt, subscribi debent ab Ordinario ... ac simul a curiae cancellario vel notario." Therefore, are the "acta curiae" only those acts "quae effectum iuridicum habere nata sunt" or all the written acts that the curia produces (e.g., a plain letter written by an ordinary to a parish priest, or even a letter from an official of the curia)? We will see below.

b) *Redigantur et expediantur*: is a hendiadys equivalent to *"redigantur apte."*

c) *In curiae archivo custodiantur*: is dealt with in cc. 486ff.

d) *Curare ut* ...: seems to me too broad an expression since it means that the chancellor can perform the indicated activities both by himself and through others. In effect, the expression *"curare ut"* requires only that someone carry out those tasks—not necessarily the chancellor, although he must make sure they are done properly. Therefore, when the curia consists of several offices, it is not necessary that the chancellor draft all the written acts personally; a competent official can do it in each case. In any case, if they are acts "quae effectum iuridicum habere nata sunt," and therefore, must be signed by the diocesan ordinary, they must also bear the signature of the chancellor (c. 474). In contrast, other acts signed by the ordinary, but of themselves "effectum iuridicum habere nata non sunt" (e.g., a simple letter written by the ordinary or by an official of the curia to a parish priest), in my judgment, do not necessarily have to bear the signature of the chancellor.

5. Though it is not expressly stated in the instant text, it must be added that the chancellor can also be a layperson (evidently, a man or woman). Beginning from *sess.* VI of the *Coetus* "De Sacra Hierarchia," the question of whether the chancellor can also be a layperson was argued at length, with some positions that were inclined negatively and others opined positively, and others who were also affirmative but with certain conditions. At first this third opinion prevailed such that the following text was proposed and accepted: "qui sit sacerdos, nisi ob specialia adiuncta Episcopus aliud iudicaverit."[2] In this manner c. 15 § 1 was formulated.[3] In *sess.* VII, on examining that c. 15 § 1, some proposed the elimination of "qui sit sacerdos," considering that "munere ... cancellarii recte fungi etiam potest probatus christifidelis laicus." But others again showed a fear that a layperson would be informed about sensitive and secret matters, in particular about those relative to the reputation of priests. It was decided, then, to allow the possibility of a lay chancellor, but adding at the same time the following reservation: "In causis quibus bona fama sacerdotis in

2. Cf. *Comm.* 24 (1992), p. 50.
3. Cf. ibid., p. 59.

discrimen vocari possit cancellarius debet esse sacerdos."[4] But since that formula was already contained in c. 16 § 2 for notaries, in *sess.* VIII it was decided to eliminate it from c. 15 § 1 to avoid duplication.[5]

The question of whether the chancellor can be a layperson, which seemed to be resolved, was brought up again by the *Coetus* "De Populo Dei," and again was resolved by allowing for that possibility.[6]

6. Regarding the qualities necessary to exercise the office of chancellor, something is mentioned in c. 483 § 2: "Cancellarius et notarii debent esse integrae famae et omni suspicione maiores." Those qualities were required for all the officials of the curia in the *Schema* 1977, c. 282 § 1. The expression was afterwards suppressed.[7] Nevertheless, it would have been opportune also to emphasize the need for technical competence, at least for the chancellor and the vice-chancellor.[8]

III. THE CHANCELLOR AND VICE-CHANCELLOR: NOTARIES AND SECRETARIES OF THE CURIA (§§ 2–3)

1. *Adiutor*: This expression by itself indicates no more than a generic function. In other words, the Code does not provide specifications in this regard and leaves all of the subsequent determinations to particular law and to each bishop, which he will provide in the letters of appointment, as appropriate.

2. *Cancellarius et vice-cancellarius sunt eo ipso notarii et secretarii curiae.*

a) What *"notarius"* means is stated in cc. 483–484.

b) However, what *"secretarius"* means is not stated there, nor can it be found in any other place. The addition *"et secretarii curiae"* is found for the first time in the *Schema* 1977, c. 295 § 3, though under the form: *"seu secretarii curiae."*[9] *"Seu"* equals the expression "in other words," and therefore, it would mean that *"secretarius"* is equal to *"notarius."* In this manner the draft was preserved even in the *Schemata* of 1980 (c. 402 § 3) and that of 1982 (c. 482 § 3). *"Seu"* is changed for *"et"* in the final text, but the reason does not appear in *Communicationes*.

4. Cf. ibid., pp. 63–64, 85.
5. Cf. ibid., pp. 93, 117–118.
6. Cf. *Comm.* 13 (1981), pp 121–122.
7. Cf. ibid., pp. 112–113, 122.
8. Cf. ibid., pp. 111–112.
9. Cf. *Comm.* 13 (1981), p 121.

In any case, *"et"* is disjunctive and, therefore, indicates a difference of meaning. The difference between *"notarius"* and *"secretarius"* could be delineated in this way: (a) *"notarius"* is the one who carries out the functions described in c. 484; and (b) *"secretarius"* is the one who maintains the documents of the curia and therefore first of all is an archivist.

3. Nothing hinders, in my judgment, the appointing of more than one vice-chancellor, and moreover—evidently—likewise for notaries, who are treated in the following canons.

483 **§ 1. Praeter cancellarium, constitui possunt alii notarii, quorum quidem scriptura seu subscriptio publicam fidem facit quod attinet sive ad quaelibet acta, sive ad acta iudicialia dumtaxat, sive ad acta certae causae aut negotii tantum.**

§ 2. Cancellarius et notarii debent esse integrae famae et omni suspicione maiores; in causis quibus fama sacerdotis in discrimen vocari possit, notarius debet esse sacerdos.

§ 1. Besides the chancellor, other notaries may be appointed whose writing or signature authenticates public documents, whether in respect of all acts, or of judicial acts alone, or only for acts concerning a particular issue or business.

§ 2. The chancellor and notaries must be of unblemished reputation and above suspicion. In cases which could involve the reputation of a priest, the notary must be a priest.

SOURCES: § 1: c. 373 §§ 1 et 2
§ 2: c. 373 §§ 3 et 4

CROSS REFERENCES: cc. 484, 1437 § 2, 1717ff, 1740ff

COMMENTARY

Francesco Coccopalmerio

I. THE CHANCELLOR AND OTHER NOTARIES OF THE CURIA (§ 1)

The formulation of § 1 has been unchanged since the first *Schemata* (c. 16 § 1)[1] to the final text. Nevertheless, it was the object of a formal correction after the promulgation of the Code: *"et quidem sive"* became *"quod attinet sive."*[2]

1. Cf. *Comm.* 24 (1992), p. 59.
2. Cf. *AAS* 75 (1983), Pars II, Appendix, p. 238.

1. *Praeter cancellarium, constitui possunt alii notarii*

a) The norm is clear and needs no explanation. Perhaps it should have been stated in a more nearly complete manner: "praeter cancellarium et, si est casus, vice-cancellarium ...," since this figure is provided for in the prior canon.

b) It is understood that laypersons can be notaries. In the *Schema* 1977, c. 296 § 2 it was said: "Notarii assumi possunt etiam laici."[3]

2. *Quorum quidem scriptura seu subscriptio publicam fidem facit*

Here begins the treatment of the activity proper to the notaries. In the following canon there are other indications in this regard. We can also recall here another text: "Acta, quae notarii conficiunt, publicam fidem faciunt" (c. 1437 § 2).

a) What does the expression *"scriptura seu subscriptio"* mean? *"Subscriptio"* is the signature of the notary at the foot of the document. *"Seu"* means "namely," "in other words": it indicates that two words are equivalent. But *"scriptura"* seems to be something more than *"subscriptio"*: it seems to indicate the drafting of the document with one's own writing in holographic form. It is the task of the notaries not only to subscribe documents, but also to write them as it is clearly stated in c. 484, 1°: *"conscribere acta et instrumenta ..."*; 2°: *"in scriptis ... redigere."* Therefore, the *"scriptura"* is something different, something more that the plain *"subscriptio."* In that case, the conjunction *"seu"* is not logical: it should have said *"vel."*

b) What does *"publicam fidem faciunt"* mean? Its explanation does not appear in the Code. Anyway, the sense is that the writing of a document or its being signed by a notary is a public testimony, that is, it makes clear, with certainty for all, that the content of the document is authentic.

c) But, at the same time, what constitutes the content of the document? Everything contained in the document? All that is affirmed in the documents, or only the author's signature? I believe the two following cases must be distinguished:

— if the content of the document has an author different than the notary (e.g., a decree of the bishop), the responsibility for the veracity of the document is the author's, and therefore, the notary who subscribes it only vouches for the authenticity of the signature;

3. Cf. *Comm.* 13 (1981), pp. 121–122.

— if the content of the document is written by the notary (cf., e.g., c. 484, 2°), the veracity of its content is assured by the notary himself or herself.

3. *Quod attinet sive ad quaelibet acta, sive ad acta iudicialia dumtaxat, sive ad acta certae causae aut negotii tantum*

These expressions indicate the scope of the activity of the notaries. That scope can be general *("quaelibet acta")* or partial *("acta certae causae aut negotii")*. In the partial context there is a subsequent distinction between judicial acts and others, which is no doubt a good idea. In effect, it is important to reserve one or several notaries for judicial work, for whose performance it is required to acquire a specific training. Likewise it could be useful to reserve one or more notaries for other kinds of acts—for example, for matrimonial dispensations or for the causes of saints—with the purpose of encouraging specialization in those activities.

II. REQUIRED QUALITIES IN THE CHANCELLOR AND IN THE NOTARIES (§ 2)

The text is divided in two parts: the qualities of the chancellor and of the notary and the requirement of priesthood in a particular case.

1. *Cancellarius et notarii debent esse integrae famae et omni suspicione maiores*

"Omni suspicione maiores" ("above all suspicion") refers particularly to the fact that the signature of the chancellor and of the notaries bears public witness and therefore, means that the veracity of their testimony must be put above all reasonable doubt. This first part of the text was different in the initial *Schemata*, c. 16 § 2, and in the *Schema* 1977, c. 296 § 2: "Notarii assumi possunt etiam laici..." The *Coetus* "De Populo Dei" changed that text for the present one referring to the qualities, and therefore, took for granted the initial provision of the rough draft.[4]

4. Cf. ibid.

2. *In causis quibus fama sacerdotis in discrimen vocari possit notarius debet esse sacerdos*

The mentioned case can be verified not only in the penal process (cc. 1717ff), but also in the procedure for removal (for parish priests, cf. cc. 1740ff) and in any other case in which something negative could come out against a priest. The reason for the norm is that, as in the case of the chancellor, likewise the notaries can be lay faithful. This second part of the text was in the initial *Schema*, c. 16 § 2: "notarius tamen in criminalibus clericorum causis debet esse sacerdos." Afterwards it was changed to obtain the present formulation, but the reason was not specified.[5] It turned out to be evident that the prior formulation was more restrictive: it only dealt with penal procedures; therefore, the current one is better.

5. Cf. *Comm.* 24 (1992), pp. 59, 64, 85.

484 **Officium notariorum est:**

1° conscribere acta et instrumenta circa decreta, dispositiones, obligationes vel alia quae eorum operam requirunt;
2° in scriptis fideliter redigere quae geruntur, eaque cum significatione loci, diei, mensis et anni subsignare;
3° acta vel instrumenta legitime petenti ex regesto, servatis servandis, exhibere et eorum exempla cum autographo conformia declarare.

The office of notary involves:

1° writing acts and documents concerning decrees, arrangements, obligations, and other matters which require their intervention;
2° faithfully recording in writing what is done, and signing the document, with a note of the place, the day, the month and the year;
3° while observing all that must be observed, showing acts or documents from the archives to those who lawfully request them, and verifying that copies conform to the original.

SOURCES: 1°: c. 374 § 1,1°
2°: c. 374 § 1,2°
3°: c. 374 § 1,3°

CROSS REFERENCES: cc. 486 § 3, 487 § 2, 488–491

COMMENTARY

Francesco Coccopalmerio

This text has remained practically unchanged since the initial *Schema*, c. 17.[1] The introduction to the canon *("Officium notariorum est...")* clearly indicates its purpose: to specify in what the office of notary consists, which is stated in the three numbered paragraphs that make up the canon.

1. *Conscribere acta et instrumenta circa decreta, dispositiones, obligationes vel alia quae eorum opera requirunt* (1°)

1. Cf. *Comm.* 24 (1992), p. 59.

The following should be noted here:

a) *"acta et instrumenta"*: seems to be a hendiadys that means "documents," "written acts";

b) *"circa"*: can be translated as "that contain";

c) *"decreta, dispositiones, obligationes"* are three expressions that seem to indicate any possible act by authority issued in written form;

d) *"vel alia quae eorum opera requirunt"*: It is not easy to say what those other documents are. They probably mean "and the like" or, in any case, all those that the authority considers opportune to be stated in written form.

2. *In scriptis fideliter redigere quae geruntur, eaque cum significatione loci, diei, mensis et anni subsignare* (2°)

a) *"In scriptis fideliter redigere"* means to take minutes, make a written record;

b) *"quae geruntur"*: that which occurs, in the sense of what one does or says in front of a notary.[2]

3. *Acta vel instrumenta legitime petenti ex regesto, servatis servandis, exhibere et eorum exempla cum autographo conformia declarare* (3°)

There are two possibilities here: *"ex regesto ... exhibere"* and "exempla cum autographo conformia declarare." In this respect, it must be noticed all that follows:

a) *"ex regesto"*: that is—in my judgment—starting from the inventory or catalog with a summary of the content (spoken about in c. 486 § 3) and, therefore, "from the archive" dealt with in cc. 486ff;

b) *"exhibere"*: to show the original document;

c) *"servatis servandis"* is a totally passive requirement and applies to every activity, both for the chancellor and any other subject. What specific meaning does it possess in this case? That can be seen in c. 487 § 2;

d) "eorum exempla cum autographo conformia declarare": the meaning is clear. The norm is specified in c. 487 § 2;

e) *"legitime petenti"*: It does not say who has the right to consult the documents. That is specified in c. 487 § 2.

2. The Italian translation, "redigere fedelmente per iscritto le pratiche in corso e apporvi la firma con l'indicazione del luogo, del giorno, del mese e dell'anno," is not satisfactory, because "pratiche in corso" does not come from "aquello que acontece en presencia del notario."

485 **Cancellarius aliique notarii libere ab officio removeri possunt ab Episcopo dioecesano, non autem ab Administratore dioecesano, nisi de consensu collegii consultorum.**

The chancellor and the other notaries can be freely removed by the diocesan Bishop. They can be removed by a diocesan Administrator only with the consent of the college of consultors.

SOURCES: c. 373 § 5

CROSS REFERENCES: cc. 192–195, 477 § 1, 494 § 2, 554 § 3, 563, 572, 682 § 2

COMMENTARY

Francesco Coccopalmerio

1. *Ab officio removeri*

This canon deals only with the removal regulated in cc. 192–195. Therefore, transfer is not considered here, which is regulated in cc. 190–191.

2. *Libere*

It must be noted that in the initial *Schemata*, c. 18 § 2, this formulation appeared: "... ab officio removeri possunt ad nutum Episcopi dioecesani,"[1] which was to be a new expression of the provision of the *CIC*/1917, c. 373 § 5: "Omnes possunt removeri aut suspendi ab eo qui illos constituit." But it seems that the *Coetus* wanted to change that norm: "sed in hac § 5 statui debet omnes removeri posse ad nutum Episcopi dioecesani."[2] Why *"sed"*? In the provision of the prior Code it was already stated clearly, though not expressly, that dealt with an office from which the holder could be removed, and therefore, of removal *"ad nutum."* In the *Schema* 1977, c. 298, there appears, however, the formulation: "libere ab officio re-

1. Cf. *Comm.* 24 (1992), pp. 60, 85, 118.
2. Cf. ibid., p. 51.

moveri possunt ab Episcopo dioecesano."[3] *"Libere"* and *"ad nutum"* are equivalents.

Canon 193 deals with removal from two kinds of offices: those conferred *"ad tempus indefinitum"* (c. 193 § 1) or *"ad tempus determinatum"* (cf. § 2), and those conferred "secundum iuris praescripta ... ad prudentem arbitrium auctoritatis competentis" (c. 193 § 3). For removal from an office of the first kind two elements are necessary: "grave" cause and observance of the procedure provided for by law (§§ 1–2). For removal from an office of the second kind a "just" cause is necessary, in the judgment of the competent authority, and it is not necessary to follow a specific procedure (§ 3).

How can it be determined if an office is of the first or second kind? That is, really, how does one know if an office has been conferred "ad prudentem discretionem auctoritatis competentis," and if it was precisely *"secundum iuris praescripta"*? In my judgment a sign of those *"iuris praescripta"* are the expressions *"libere"* and *"ad nutum."* This is what occurs in the offices of vicar general and episcopal vicar: "libere ab Episcopo dioecesano nominantur" (c. 477 § 1); for the offices of chancellor and notary: "libere ab officio removeri possunt" (c. 485); for the vicar forane: "iusta de causa, pro suo prudenti arbitrio, Episcopus dioecesanus ab officio libere amovere potest" (c. 554 § 3); for the rector of the church: "loci Ordinarius ex iusta causa, pro suo prudenti arbitrio ab officio removere potest" (c. 563), for the chaplain: cf. c. 572 (cf. also c. 682 § 2); etc.

Let us return to the distinction made by c. 193. In reality, it cannot be affirmed that, on one hand, there exist offices conferred for a set time or for an indefinite time, and on the other hand, offices conferred according to the prudent discretion of the competent authority, as though the latter were not conferred for a determined or undetermined time. All offices are conferred either for an undetermined or for a fixed time, but among the latter, some can be at the prudent discretion of the competent authority, in the sense that the holder can be removed without the observance of certain procedures, though a just cause must be present.[4]

Therefore, the diocesan bishop can remove the chancellor and notaries for just cause, which must be weighed according to his prudent judgment. In any case, I believe that the chancellor and vice-chancellor cannot be compared with the plain notaries. For removal of the chancellor or vice-chancellor, the cause must be just and grave. That just-and-grave cause, in the end, is nothing more than the incapacity to carry out the of-

3. Cf. *Comm.* 13 (1981), p. 122.

4. The commentary on c. 193 by H. SOCHA, in *Münsterisches Kommentar zum CIC,* is good, although I would not use the term "Ausnahmen" (cf. no. 5) for the offices of the general and episcopal Vicar, chancellor and notary, vicar forane, and church rector and chaplain, because they are offices conferred by either a determined or indeterminate time, and, at the same time, the prudent discretion of the competent authority.

fice or the presence of something negative or conflicting with it. It can be recalled here what the Code provides in relation to the diocesan financial officer: "durante munere, ne amoveatur nisi ob gravem causam ab Episcopo aestimandam, auditis collegio consultorum atque consilio a rebus oeconomicis" (c. 494 § 2). In this case "grave cause" is opportunely mentioned and a procedure is established. The grave cause must apply also for removal of the chancellor and vice-chancellor. To listen to—not ask for permission of—the college of consultors could be also a wise decision.

3. *Cancellarius aliique notarii*

Perhaps in the future there could be provided a distinction between the chancellor and the other notaries, and not require the diocesan administrator to obtain the consent of the college of consultors for the removal of these latter officials.

4. When the chancellor, vice-chancellor, and the other notaries are lay faithful, employment contracts must be established that allow for rescission. A council father referred to that requirement in an observation in the *Schema* 1980, c. 405 (presently c. 485): "Norma non videtur iusta, praesertim si de laicis agatur, qui contractum laboris habere debent." To this observation the following reply was given: "In huiusmodi contractibus prudentes clausulae revocatoriae poni semper debent."[5]

5. Cf. *Comm.* 14 (1982), p. 214.

486 **§ 1. Documenta omnia, quae dioecesim vel paroeciasrespiciunt, maxima cura custodiri debent.**

§ 2. In unaquaque curia erigatur, in loco tuto, archivum seu tabularium dioecesanum, in quo instrumenta et scripturae quae ad negotia dioecesana tum spiritualia tum temporalia spectant, certo ordine disposita et diligenter clausa custodiantur.

§ 3. Documentorum, quae in archivo continentur, conficiatur inventarium seu catalogus, cum brevi singularum scripturarum synopsi.

§ 1. All documents concerning the diocese or parishes must be kept with the greatest of care.

§ 2. In each curia there is to be established in a safe place a diocesan archive where documents and writings concerning both the spiritual and the temporal affairs of the diocese are to be properly filed and carefully kept under lock and key.

§ 3. An inventory or catalogue is to be made of documents kept in the archive, with a short synopsis of each document.

SOURCES: § 1: c. 375 § 1; Secr. St. Litt. circ., 15 apr. 1923; Paulus PP. VI, Alloc., 6 nov. 1964 (*AAS* 56 [1964] 999–1001)
§ 2: c. 375 § 1; SCPF Resp. 2, 14 mar. 1922; Secr. St. Litt. circ., 15 apr. 1923
§ 3: c. 375 § 2

CROSS REFERENCES: cc. 173 § 4, 413 § 1, 482 § 1, 487–491, 535 § 4, 895, 1082, 1133, 1208, 1283, 3°, 1284 § 2, 9°, 1306 § 2, 1339 § 3, 1719

COMMENTARY

Francesco Coccopalmerio

I. CUSTODY OF THE DOCUMENTS (§ 1)

With § 1 of the canon the regulation of the ecclesiastical archives is introduced.[1] In the initial *Schemata*, c. 19, this paragraph did not exist;[2] it appears for the first time in the *Schema* 1977, c. 299 § 1.[3]

1. *Documenta omnia ... maxima cura custodire debent.* The text states a general obligation and with particular strength: "*maxima cura.*"

2. *Documenta omnia, quae dioecesim vel paroecias respiciunt.* The meaning of the expression is dual, given that the meaning of "diocese" and "parish" can be, in turn, dual. In effect, they can be understood:

— as subjects distinct from others;

— as territorial ranges.

We will take the case of the parish understood in this dual sense and we will present a pair of examples of documents that must be preserved in the archive.

a) The *registry of baptisms.* If we consider the parish as a subject distinct from others, the present text means the registry of baptisms celebrated in the parish; if we consider it as a territorial range, it means the registery of the baptisms celebrated in the parish and also the registry of those celebrated in a chaplaincy or in a rectoral church existing in the territory of the parish.

b) A *sale transaction.* If we consider the parish as a subject distinct from others, the text means a sales transaction of property of the juridical person "parish"; if we consider it as a territorial range, the text means a sale transaction of property of the juridical person "parish" and also the sales transaction of the ecclesiastical juridical persons existing in the range of the parish.

And likewise for all the kinds of ecclesiastical documents. Therefore, it could have been better to simply say: "Documenta omnia ecclesiastica quae in ambitu dioecesis inveniuntur ab unaquaque persona juridica maxima cura custodiri debent." In this sense we can understand the discussion

1. Cf., for this material, A. LONGHITANO, "Gli archivi ecclesiastici," in *Ius Ecclesiae* 4 (1992), pp. 649–667, and the bibliography cited there.
2. Cf. *Comm.* 24 (1992), pp. 60, 85–86, 118–119.
3. Cf. *Comm.* 13 (1981), pp. 122–123.

that took place in the *Coetus* "De Populo Dei" regarding this text: "One Consultor proposed to suppress 'vel *paroeciam*' (it was singular in the *Schema*); it is sufficient to speak of the diocese, which encompasses all the parishes. The Relator does not agree because for certain documents the copies that must be scrupulously kept are in the parishes."[4] This consultor certainly did not intend (contrary to what the relator understood) to exclude from the provision the parishes, but to encompass in the territorial range of the dioceses not only the parishes, but also all the juridical persons in the sense that we have indicated above.

3. The obligation of safekeeping the documents, stated in general terms in § 1 ("maxima cura custodiri debent") is the basis for cc. 486 § 2–491, in which the obligation of constituting the ecclesiastical archives is established with the corresponding norms of security:

a) at a central level:

— the diocesan archive or of the curia (cf. cc. 486 § 2–488);

— the secret archive (cf. cc. 489–490);

— the historical archive (cf. c. 491 §§ 2–3);

b) at the outlying level:

— archives of the juridical persons existing in the range of the diocese (cf. c. 491 §§ 1 and 3).

II. THE DIOCESAN ARCHIVE (§ 2)

1. *In unaquaque curia erigatur.* It is, therefore, an obligation for all the curias.

2. *In loco tuto.* This is the first of the provisions relative to security. Regarding the "closure" of the archive, see *infra*, the commentary on the expression *"diligenter clausa,"* and cc. 487–488. In the initial *Schemata*, c. 19 § 1, it was said: *"in loco tuto et commodo."*[5] In the *Schema* 1977, c. 299 § 2 *"in loco tuto"*[6] already appears.

3. *Archivum seu tabularium.* One assumes that it means a place and not only a cabinet (cf. c. 487 § 1: "nemini licet illud ingredi"; c. 489 § 1: "aut saltem in communi archivo armarium seu scrinium").

4. *Dioecesanum.* Obviously means "the archive of the diocese" (cf. also c. 491 § 1: *"in archivo dioecesano"*).

4. Cf. *Comm.* 13 (1981), p. 123.
5. Cf. *Comm.* 24 (1992), pp. 60, 85, 118.
6. Cf. *Comm.* 13 (1981), p. 123.

a) Nevertheless, the following must be observed:

— it is *not* spoken of in the sense of the *only archive*, in which all the documents of the dioceses are kept, and which therefore *excludes other* archives;

— but in the sense of a *central archive*, to which are *added outlying* archives.

The reason for this is that the other archives exist and should exist that are mentioned in c. 491 § 1, where the distinction is made emphatically between the central archive and outlying archives since the text speaks of "inventories or indexes" that must be made "in duplicate, one copy to be kept in the archive itself and the other in the diocesan archive." Therefore, two copies and two archives, the central and outlying archives.

Canons 535 § 4, 895 also deal with the parochial archives. The archives of other juridical persons are dealt with in cc. 173 § 4, 1208, 1306 § 2 (see below, commentary on c. 491 § 1).

b) Other denominations used by the Code to designate the diocesan archive are the following:

— *"archivum curiae"*: cf. cc. 482 § 1, 1283, 3°,1284 § 2, 9°, 1306 § 2;

— *"archivum commune"*: cf. c. 489 § 1. In other places the word *"archivum"* refers to the diocesan archive, though it might not be accompanied by specifics: cf. cc. 486 § 3, 487 § 1, 488.

c) The preservation of the documents in the center of the diocese also envisions the "secret" archive (cc. 489–490, 1082, 1133, 1339 § 3, 1719) and the "historical" archive (c. 491 § 2), which must be understood as two different archives, or as different parts of the same diocesan archive.[7]

5. *In quo instrumenta et scripturae ...*

The meaning is identical to the expression *"documenta"* of § 1 (see above). It could have been opportune to not multiply the terms and to use the same wording as § 1.

6. *Quae ad negotia dioecesana tum spiritualia tum temporalia spectant.*

a) First, if we contrast this expression with that of § 1: "quae dioecesim vel paroecias respiciunt," it is noticed that the two expression indicate different facts. In effect,

— the expression of § 1, "quae dioecesim vel paroecias respiciunt," tries to encompass all the ecclesiastical documents present in the range of the diocese, and therefore, those of the central archive (that is, the dioce-

7. Cf. A. CELEGHIN, "L'archivio diocesano nel C.I.C.," in *L'amico del clero* 72 (1990), pp. 276–283; 314–331; cf. especially p. 283.

san archive) and the outlying archives (that is, those of the juridical persons mentioned in c. 491 § 1);

— in turn, the expression of § 2, *"quae ad negotia ... spectant,"* tries to signify and encompass only the ecclesiastical documents present in the central archive, namely, of the diocese or curia.

To conclude, it can be added that there should also be in the diocesan archive the copies of the indices and inventories of the documents present in the outlying archives, pursuant to c. 491 § 1.

b) What does the expression *"quae ad negotia ... spectant"* mean? A synthetic response could be made: all the documents that are received by the curia (applications for authorization or others, various communications) and all those issued by the curia as acts of the curia (from acts with the diocesan bishop's signature to simple letters from office managers). There are archival copies of all these.

7. *Certo ordine disposita.*

It is required that the documents be placed in order, but the selection of criteria for ordering them is left, evidently, to each diocesan curia or better to particular law. In any case, the norm is completed in § 3.

In the initial *Schemata*, c. 19 § 1,[8] and in the *Schema* 1977, c. 299 § 2, it was said *"apte disposita."* In the *Coetus* "De Populo Dei" a consultor proposed "to say instead of 'apte'... the words 'certo ordine' to stimulate the correct ordering of the diocesan archive," and the proposal was accepted.[9]

8. *Diligenter clausa.*

This requirement is explained in c. 487 § 1 (cf.).

III. THE INVENTORY OR CATALOGUE OF THE ARCHIVE (§ 3)

The performance of two prescriptions is established here:

a) *inventarium seu catalogus*: is the index by title (cf., similarly, 491 § 1);

b) *cum brevi singularum scripturarum synopsi*: is the summary of the content, namely, the purpose of each document.

These provisions complement the provisions of § 1 with the expression *"certo ordine disposita."* The inventory or catalog with the content summary is—in my judgment—the *"regestum"* spoken of in c. 484, 3°.[10]

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8. Cf. *Comm.* 24 (1992), pp. 60, 85, 118.
9. Cf. *Comm.* 13 (1981), p. 123.
10. Also cf. *Comm.* 24 (1992), p. 51, related to c. 371 of the *CIC*/1917.

487 **§ 1. Archivum clausum sit oportet eiusque clavem habeant solum Episcopus et cancellarius; nemini licet illud ingredi nisi de Episcopi aut Moderatoris curiae simul et cancellarii licentia.**

§ 2. Ius est iis quorum interest, documentorum, quae natura sua sunt publica quaeque ad statum suae personae pertinent, documentum authenticum scriptum vel photostaticum per se vel per procuratorem recipere.

§ 1. The archive must be locked, and only the Bishop and the chancellor are to have the key; no one may be allowed to enter unless with the permission of the Bishop, or with the permission of both the Moderator of the curia and the chancellor.

§ 2. Persons concerned have the right to receive, personally or by proxy, an authentic written or photostat copy of documents which are of their nature public and which concern their own personal status.

SOURCES: § 1: c. 377 §§ 1 et 2
§ 2: c. 384 §§ 1 et 2

CROSS REFERENCES: cc. 486 § 2, 488

COMMENTARY

Francesco Coccopalmerio

I. CLOSURE OF THE ARCHIVES AND ACCESS TO IT (§ 1)

Canons 487–488 contain a series of provisions relative to the confidential character of the archive. We will begin with the provisions of § 1 of c. 487.

1. *Archivum clausum sit oportet.* This is a specification of the more generic affirmation of c. 486 § 2: *"diligenter clausa."*

2. *Eiusque claves habeant solum Episcopus et cancellarius.* In the *CIC*/1917, c. 377 § 2, custody of the key was entrusted only to the chancel-

lor. Likewise it appeared in the initial *Schema*, c. 20 § 1.[1] The *Coetus* "De Sacra Hierarchia," in *sess.* VII, added *"Episcopus."*[2] It can be noted on this point that in this and other texts (cf., e.g., cc. 488, 490 § 1), the expression *"Episcopus"* is used and not the more nearly correct *"Episcopus dioecesanus,"* which is complete. The reason is that those texts generally come from the prior Code (cf., e.g., cc. 377 § 1, 378 § 1, 380–382 *CIC*/1917).

3. *Nemini licet illud ingredi nisi de Episcopi aut Moderatoris curiae simul et cancellarii licentia.*

a) The purpose of entering the archive is, evidently, to consult the documents kept there, and not to remove them from the archive; for that case one has to turn to the provisions of c. 488.

b) Besides the diocesan bishop, permission to enter the archive and, therefore, to consult the documents, is granted by the moderator of the curia together with the chancellor. In the initial *Schema*, c. 20 § 1, said: "nisi de Episcopi aut vicarii generalis vel episcopalis et cancellarii licentia."[3] The *Coetus* "De Sacra Hierarchia," in *sess.* VII, modified the norm thus: "nisi de Episcopi aut Capitis Curiae et cancellarii licentia."[4] In the *Schema* 1977, c. 300 § 1 it was said: "nisi de Episcopi aut Moderatoris Curiae et cancellarii licentia." But the *Coetus* "De Populo Dei" approved that text with the condition that after *"aut"* there must be added an *"insimul,"* and that "according to the proposal of one Consultor, to avoid permission being granted by the Chancellor alone, who could be a layperson."[5]

II. THE RIGHT TO OBTAIN COPIES OF THE DOCUMENTS OF THE ARCHIVE (§ 2)

This is a particular case of the duplication of certain documents and their delivery to certain subjects. The present text is the result of notable modifications from the original.

In the initial *Schemata*, c. 20 § 2, it was said: "Documenta quae in Curiae aut paroeciae archivo sub secreto servanda non sunt, ius est christifidelibus quorum interest inspiciendi..."[6] It was proposed to eliminate *"paroeciae"* because here only the archive of the curia was spoken of, but the proposal was rejected.

1. Cf. *Comm.* 24 (1992), p. 60.
2. Cf. ibid., p. 64.
3. Cf. ibid., p. 60.
4. Cf. ibid., p. 64.
5. Cf. *Comm.* 13 (1981), p. 123.
6. Cf. *Comm.* 24 (1992), pp. 60, 86, 119, 128.

As it can be seen, the formulation *"quorum interest"* is totally imprecise because it does not offer any criterion to establish objectively who has that interest and who does not, and this despite the *Coetus* "De Sacra Hierarchia," upon establishing its basic criteria, manifested the following idea: "ergo distinctionem proponit inter illos christifideles qui ius habent inspiciendi quaedam documenta et alios qui hoc iure profecto carent," even though the conclusion was subsequently only an ambiguous modification of c. 384 § 1 of the *CIC*/1917, to go on to the text that we have discussed above.[7]

With reason, therefore, a greater specification is found in c. 300 § 2 of the *Schema* 1977: "documentorum, quae natura sua sunt publica quaeque ad statum suae personae pertinent...,"[8] which has become the final text.

Another interesting modification refers to the second part of the text that we are analyzing. In the initial *Schemata*, c. 20 § 2 said: "Documenta... inspiciendi, itemque postulandi ut sua impensa sibi legitimum eorum exemplum exscriptum aut photostaticum tradatur."[9] In the *Schema* 1977, c. 300 § 2, *"inspiciendi"* disappeared and only the right to receive a copy of the documents remained. Therefore, the documents cannot be directly consulted.

We will now look at the different parts of the text.

1. *Iis quorum interest.* The subjects dealt with here can be described by the following words.

2. *Documentorum ... quae ad statum suae personae pertinent.* Therefore, the subjects who have "interest" are those who ask for those documents: "interest" may be had only for that kind of document and not for others.

3. *Quae natura sua sunt publica.* Therefore, those regarding a person's status is (a) public; and (b) "natura sua." Of that kind would be, for example, a baptismal certificate or authorization for marriage; not, however, a letter from the bishop regarding the person.

4. *Documentorum ... documentum scriptum vel photostaticum.* The copy of the document can be a transcription or a photocopy. The construction "documentorum ... documentum" sounds bad.

5. *Authenticum.* The copy must always be genuine, that is, subscribed by the chancellor or by a notary who will certify its conformance with the original, pursuant to c. 484, 3°.

6. *Per se vel per procuratorem.* The proxy must demonstrate his or her condition as such.

7. Cf. ibid., p. 51.
8. Cf. *Comm.* 13 (1981), p. 123.
9. Cf. *Comm.* 24 (1992), pp. 60, 86, 119.

7. *Ius est ... recipere* (better: *recipiendi*). To that right corresponds the duty of delivering those copies. Whose obligation is it? It is especially the chancellor's or whoever assists the chancellor or substitutes for him or her, as appropriate.

8. The norm of this § 2 must not be understood to mean that only the cited subjects can ask for authentic copies and *only* of the documents indicated here. In effect, in my opinion:

a) other subjects can ask for authentic copies. For example, the vicar generals and episcopal vicars, the *"Moderator curiae,"* those in charge of the different offices of the curia—the last, with the consent, at least presumed, of the moderator and chancellor;

b) the subjects mentioned in this § 2 can request other documents that refer to the status of the person if they are not public, while always having the consent of the moderator of the curia and the chancellor.

488 **Ex archivo non licet efferre documenta, nisi ad breve tempus tantum atque de Episcopi aut insimul Moderatoris curiae et cancellarii consensu.**

It is not permitted to remove documents from the archive, except for a short time and with the permission of the Bishop or of both the Moderator of the curia and the chancellor.

SOURCES: c. 378 §§ 1 et 2

CROSS REFERENCES: c. 487

COMMENTARY

Francesco Coccopalmerio

1. *Efferre*. It means "to remove outside, to take the original document": in the case of taking a genuine copy, cf. c. 487 § 2. The purpose of that *"efferre"* is, evidently, for the consultation of the original, which includes the possibility of making copies of it.

2. *Non licet ... nisi ad breve tempus tantum*. This is equivalent to saying: *"licet ... si ad breve tempus."* The norms seems (if we compare it to that of c. 487 § 2 and with c. 378 *CIC*/1917) very imprecise, and therefore broad, since it does not determine (a) the subjects that have a right to remove documents; (b) to which documents that right refers; (c) the maximum time the documents can remain outside the archive; or (d) the guarantees required to remove documents.

In the c. 487 § 2 the subjects and documents were specified, however. And c. 378 *CIC*/1917 established: (a) the time of three days, extendible somewhat in the judgment of the Ordinary (cf. c. 378 § 1 *CIC*/1917); and (b) the obligation of leaving a receipt signed by the borrower of the document (cf. *ibid.* § 2). The *Coetus* "De Sacra Hierarchia," in *sess.* VI, while deciding to change *"post triduum"* for *"ad breve tempus,"* considered it important nevertheless to conserve the obligation of leaving a signed receipt,[1] which remained therefore in the initial *Schemata*, c. 21 § 2,[2] up to the *Schema* 1977, c. 301 § 2, when the *Coetus* "De Populo Dei" decided "Section 2 is suppressed because is deals with a prescription that is too particular."[3]

1. Cf. *Comm.* 24 (1992), p. 51.
2. Cf. ibid., pp. 60, 86, 119.
3. Cf. *Comm.* 13 (1981), p. 124.

3. *Atque de Episcopi aut insimul Moderatoris curiae et cancellarii consensu.* The addition of the consent of the vicar general, which came to be after the *"Caput Curiae"* and after the *"Moderator Curiae,"* goes back to the initial *Schemata*, c. 21 § 2,[4] while the addition of *"insimul"* is from the *Coetus* "De Populo Dei," again because the chancellor can be a layperson (cf. c. 487 § 1).[5]

I think that such permission should be granted judiciously. In particular the two wise conditions imposed by the cited c. 378 of the *CIC*/1917 should be required.

But more basically, we can ask ourselves reasonably if there exist reasons for this removal of documents (except momentarily for some office of the curia), for at least currently, it is possible and convenient to obtain photostatic copies, authenticated by the chancellor, if need be.

4. Cf. *Comm.* 24 (1992), pp. 51, 60, 86, 119.
5. Cf. *Comm.* 13 (1981), p. 124.

489 **§ 1. Sit in curia dioecesana archivum quoque secretum, aut saltem in communi archivo armarium seu scrinium, omnino clausum et obseratum, quod de loco amoveri nequeat, in quo scilicet documenta secreto servanda cautissime custodiantur.**

§ 2. Singulis annis destruantur documenta causarum criminalium in materia morum, quarum rei vita cesserunt aut quae a decennio sententia condemnatoria absolutae sunt, retento facti brevi summario cum textu sententiae definitivae.

§ 1. In the diocesan curia there is also to be a secret archive, or at least in the ordinary archive there is to be a safe or cabinet, which is securely closed and bolted and which cannot be removed. In this archive documents which are to be kept under secrecy are to be most carefully guarded.

§ 2. Each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since a condemnatory sentence concluded the affair. A short summary of the facts is to be kept, together with the text of the definitive judgement.

SOURCES: § 1: c. 379 § 1
§ 2: c. 379 § 1; CodCom Resp. II, 5 aug. 1941 (*AAS* 33 [1941] 378)

CROSS REFERENCES: cc. 413 § 1, 490, 1133, 1339 § 3, 1719

COMMENTARY

Francesco Coccopalmerio

I. THE SECRET ARCHIVE OF THE CURIA (§ 1)

The text of § 1 remained practically unchanged since the initial *Schemata*, c. 22 § 1.[1] The denomination of "secret" was added by the *Coetus* "De Populo Dei."[2]

1. Cf. *Comm.* 24 (1992), pp. 52, 60, 64, 86, 119.
2. Cf. *Comm.* 13 (1981), p. 124.

1. *Sit in curia dioecesana.* Thus, this concerns an obligation.

2. *Archivum quoque secretum aut saltem in communi archivo armarium seu scrinium.* Therefore it must be either a branch office distinct from the diocesan archive or in a separate cabinet in the same branch or a part of the same cabinet.

3. *Aut saltem.* This seems to indicate an exception, namely, it seems to express that the secret archive should always be a specific section when the normal practice is that it is only one cabinet or part of a cabinet.

4. *Omnino clausum et obseratum, quod de loco amoveri nequeat, in quo... cautissime custodiantur.* This is an affirmation of the general principle that is specified ahead in c. 490.

5. *Archivum ... secretum.* The concept of a secret archive is contained in the words concluding the text: "in quo scilicet documenta secreto servanda cautissime custodiantur."

6. *Documenta secreto servanda.* From the other canons one knows what these documents are. We can cite here the following kinds of documents:

a) regarding secretly celebrated marriages (cf. c. 1133);

b) regarding *"monitiones"* and *"correptiones"* (c. 1339 § 3);

c) referring to criminal prosecutions (c. 1719);

d) the relationship of the persons who will assume the governance of the diocese in case the see is impeded (c. 413 § 1: Although that canon does not expressly address the secret archive of the curia, it uses a completely equivalent expression, *"a cancellario sub secreto"*);

e) the same can be said of other cases, as provided for by cc. 269, 2° and 377 § 2.

II. PERIODIC DESTRUCTION OF CERTAIN DOCUMENTS (§ 2)

The text of this paragraph was preserved substantially unchanged from the initial *Schemata*, c. 22 § 2.[3]

1. *Documenta causarum criminalium in materia morum.* These are the documents dealt with in cc. 1717–1731, but only those regarding *"materia morum."*

2. *Destruantur.* In the *CIC*/1917, c. 379 § 1 *"comburantur"* was used.

3. Cf. *Comm.* 24 (1992), pp. 52, 61, 86, 94, 119.

490 **§ 1. Archivi secreti clavem habeat tantummodo Episcopus.**

§ 2. Sede vacante, archivum vel armarium secretum ne aperiatur, nisi in casu verae necessitatis, ab ipso Administratore dioecesano.

§ 3. Ex archivo vel armario secreto documenta ne efferantur.

§ 1. Only the Bishop is to have the key of the secret archive.

§ 2. When the see is vacant, the secret archive or safe is not to be opened except in a case of real necessity, and then by the diocesan Administrator personally.

§ 3. Documents are not to be removed from the secret archive or safe.

SOURCES: § 1: c. 379 § 3
§ 2: cc. 379 § 4, 382 § 1
§ 3: c. 382 §§ 1 et 2

CROSS REFERENCES: c. 489 § 1

COMMENTARY

Francesco Coccopalmerio

This canon is an explanation of the general principle affirmed in c. 489 § 1: "omnino clausum et obseratum ... cautissime custodiantur." The norm much simplifies the norm of the *CIC*/1917, cc. 379 §§ 3–4, 380–382. The history of the text shows several changes leading to a progressive restriction on access to the secret archive.

Regarding the custody of the keys (§ 1), the initial *Schemata*, c. 23 § 1, provided for three subjects: "Episcopus et cancellarius aliusve sacerdos ab Episcopo designatus,"[1] while in the *Schema* 1977, c. 303 ("aut pro opportunitate alius sacerdos ab Episcopo designatus") was added, and later there was the suppression of both the chancellor and the priest designated by the bishop, such that only the bishop remained.[2]

Regarding opening the secret archive when the see is vacant (§ 2), the initial *Schemata*, c. 23 § 2, granted that faculty to the diocesan admin-

1. Cf. *Comm.* 24 (1992), pp. 52, 61, 64, 86, 119, 128.
2. Cf. *Comm.* 13 (1981), p. 124.

istrator or his delegate.[3] Thus, the norm in c. 303 § 2 of the *Schema* 1977 continued, but afterwards the mention of the delegate was suppressed.[4]

Regarding the prohibition of removing documents from the secret archive (§ 3), the *Schemata* were always in agreement.

This canon provides substantially the following:

a) The custody of the key for the secret archive corresponds only to the diocesan bishop because the right to consult the documents there also only corresponds to him (§ 1).

b) Therefore one concludes that other subjects—including the chancellor and the moderator of the curia—can consult those documents only with the permission of the diocesan bishop.

c) If the see is vacant, the authorized subject for the mentioned purposes is the diocesan administrator, but only in case of "genuine necessity," which has to be assessed according to the prudent judgment of the diocesan Administrator himself.

d) If the see is impeded, the canon does not say anything, but it must be considered applicable pursuant to c. 414 ("... tenetur obligationibus atque potestate gaudet, quae iure Administratori dioecesano competunt"); the same norm is provided for a vacant see regarding who would rule the diocese (cf. c. 413).

e) In any case, not even the diocesan bishop can remove documents from the secret archive (§ 3).

3. Cf. *Comm.* 24 (1992), pp. 52, 61, 86, 119.
4. Cf. *Comm.* 13 (1981), p. 124.

491 **§ 1. Curet Episcopus dioecesanus ut acta et documenta archivorum quoque ecclesiarum cathedralium, collegiatarum, paroecialium, aliarumque in suo territorio exstantium diligenter serventur, atque inventaria seu catalogi conficiantur duobus exemplaribus, quorum alterum in proprio archivo, alterum in archivo dioecesano serventur.**

§ 2. Curet etiam Episcopus dioecesanus ut in dioecesi habeatur archivum historicum habentia in eodem diligenter custodiantur et systematice ordinentur.

§ 3. Acta et documenta, de quibus in §§ 1 et 2, ut inspiciantur aut efferantur, serventur normae ab Episcopo dioecesano statutae.

§ 1. Only the bishop is to have the key of the secret archive.

§ 2. When the see is vacant, the secret archive or safe is not to be opened except in a case of real necessity, and then by the diocesan Administrator personally.

§ 3. Documents are not to be removed from the secret archive or safe.

SOURCES: § 1: c. 383 § 1
§ 2: Secr. St. Litt. circ., 15 apr. 1923 SCCouncil Normae, 24 maii 1939 (*AAS* 31 [1939] 266–268); Pontificium Consilium Ecclesiasticis Italiae Tabulariis Curandis, Instr. *A seguito*, 5 dec. 1960 (*AAS* 52 [1960] 1022–1025)
§ 3: cc. 378 §§ 1 et 2, 382 § 1, 383 § 2, 384 § 2

CROSS REFERENCES: cc. 173 § 4, 486 § 3, 503, 535 § 4, 556, 1283, 3°, 1284 § 2, 9°, 1306 § 2, 1307 § 2

COMMENTARY

Francesco Coccopalmerio

I. THE DUTY OF THE DIOCESAN BISHOP TO CARE FOR THE EXISTING ECCLESIASTICAL ARCHIVES OF HIS TERRITORY VIGILANTLY (§ 1)

The history of this text is interesting for exegetical purposes. The *Coetus* "De Sacra Hierarchia," with initial confusion, wanted to preserve

c. 383 § 1 of the *CIC*/1917, with this formulation: "Curet Episcopus dioecesanus ut archivorum quoque ecclesiarum cathedralium, collegiatarum, paroecialium, necnon personarum iuridicarum publicarum et piorum locorum inventaria seu catalogi conficiantur duobus exemplis, quorum alterum in proprio archivo, alterum in archivo episcopali servetur, salvo praescripto cann. (470 § 3, 1522, 2°–3°, 1523, 6°)."[1]

As can be seen, for all the specified subjects, the norm did not establish the obligation of having the documents in their own archive, but only that of making inventories or catalogs of the documents, one to be kept in the archive itself, and one to be sent to the episcopal archive. This means, at least implicitly, the obligation of having the documents in the proper archive. Whoever has the obligation of making the catalog must preserve the cataloged documents and is not free to do otherwise. The expression, "salvo praescripto cann," indicates something else: the obligation of having certain documents (parochial registers, documents regarding temporal goods) and of sending a copy to the archive of the curia.

In any case, the *Coetus* "De Sacra Hierarchia" needed to explain this obligation and in *sess.* VIII decided to modify the cited text: "Curet Episcopus dioecesanus ut acta et documenta archivorum quoque ecclesiasticorum cathedralium ... priorum locorum diligenter serventur atque inventaria... episcopali servetur."[2]

It can be observed, in particular, that the expression "ecclesiasticorum" replaces "ecclesiarum," but we do not know the reasons for that change.[3] In the *Coetus* "De Populo Dei" some changes were decided upon, of which the most important are the following three:

a) "... to suppress the clause 'necnon personarum iuridicarum publicarum et piorum locorum,' because it is not the bishop's task to take care of the documents of juridical persons not under his direct jurisdiction." But that reason, which by itself is certain, should not have caused the clause to change since among the "personae iuridicae publicae" there are several under the direct jurisdiction of the bishop. In effect, the archives are not of a religious institution, but are, for example, archives of a public association (cf. c. 305), or of a pious foundation (cf. c. 1303). Therefore, it should have said: "personarum iuridicarum Episcopo dioecesano subiectarum";

b) "... to use a more generic expression and ... to add after 'paroecialium' the words 'aliarumve in suo territorio exstantium.'" That 'aliarumve' refers, logically, to one already gone—after the change for "ecclesiasticorum"—while it is understood as 'ecclesiarum';

1. Cf. *Comm.* 24 (1992), pp. 52, 61, 65, 87.
2. Cf. *Comm.* 24 (1992), pp. 94, 120, 129.
3. Cf. ibid.

c) "... to say 'ecclesiarum' instead of 'ecclesiasticorum', to clarify the Latin expression."

Thus we return to the first draft. But, in conclusion, reference is made here only to the archives of the "churches" which are places of worship, to the exclusion of the juridical persons that do not have a church.[4]

We have already seen different parts of this paragraph.

1. *Curet episcopus dioecesanus.* The ways of accomplishing that duty are principally: *a)* by establishing appropriate norms; *b)* by controlling their being carried out, especially during pastoral visitation (cf. c. 535 § 4, for the parishes).

2. *Ecclesiarum cathedralium.* It would have been better, at least regarding norms, to say "cathedralis" (the text comes from c. 383 § 1 of the *CIC*/1917, in which it was stated in plural: "Curent Episcopi...," and therefore it was also logical the "ecclesiarum cathedralium").

3. *Collegiatarum.* For them, cf. cc. 503ff.

4. *Paroecialium.* For them, cf. c. 535 § 1.

5. *Aliarumque in suo territorio exstantium.* These can be governed by: *a)* a rector (cf. cc. 556ff); *b)* a chaplain (cf. cc. 564ff).

6. Several observations are necessary for the present text, whose final formulation is almost literally from the prior Code, c. 383 § 1.

a) The text speaks of archives "of the churches." Evidently, it means "churches" as places of worship (cf. cc. 1214ff). Nevertheless, it must be specified that the archives are of "juridical persons." Therefore, the churches can be juridical persons or belong to juridical persons. In this second case, archives of the churches cannot be spoken of, but rather the archives of the juridical persons, even those archives that are found in churches understood as places of worship.

b) Moreover, the text speaks only of the archives of the churches. But thus it excludes the archives of juridical persons that are not churches and do not possess a church. The correct expression should have been: "archivorum quoque personarum iuridicarum in territorio exstantium suae dioecesis et ipsius Episcopi iurisdictioni subiectorum."

c) In any case, in the Code the archives of the following categories of juridical persons are mentioned:

— those in which elections take place (cf. c. 173 § 4: "All the proceedings of an election ... are to be carefully preserved in the archive of the college");

— those in which administration of temporal goods is carried out (cf. c. 1283, 3°: "one copy of this inventory is to be kept in the administra-

4. Cf. *Comm.* 13 (1981), p. 125.

tion office and another in the curial archive"; c. 1284 § 2, 9°: "keep in order and preserve in a fitting and secure archive the documents and records ..., place authentic copies in the archive of the curia");

— those to which a pious foundation is attached (cf. c. 1306 § 2: "One copy of the document is to be carefully preserved in the curial archive and another copy in the archive of the juridical person to which the foundation pertains");

— the churches governed by a rector in which there is a pious foundation (cf. c. 1307 § 2: "another book is to be kept," therefore in an archive.

In other words, in every juridical person in which documents exist it is necessary for there to be an archive.

7. *Atque inventaria seu catalogi conficiantur.* We can add, by analogy to c. 486 § 3: "cum brevi singularum scripturarum synopsi."

8. It can be suggested that both diocesan bishop and the Bishops' Conference establish subsequent norms in this regard (as the *Coetus* "De Sacra Hierarchia" already suggested).[5]

II. THE HISTORICAL ARCHIVE (§ 2)

This paragraph was added at the last hour. In effect, it was not in the *Schema* 1977, c. 304, nor did it appear in the deliberations of the *Coetus* "De Populo Dei."[6] We find it for the first time in the *Schema* 1980, c. 411 § 2.

1. *Curet... ut habeatur.* That expression indicates an obligation.

2. *Archivum historicum.* The concept of "historical archive" is defined from the content of that archive, namely, from the "documenta valorem historicum habentia," but what must be understood for its "historical value" is not defined there: therefore it is left to particular law as well as the judgment of the diocesan bishop.

3. It is important to provide for, at least in the larger dioceses, the figure of the archivist, who possesses special scientific talents. One observation of a Father with the Plenary Session of 1981 in mind, put it this way: "Addatur in § 2: '... archivum historicum, cui praesit archivarius, atque...', quia oportet ut figura iuridica archivarii in novo C.I.C. inseratur, attentis

5. Cf. *Comm.* 24 (1992), p. 129.
6. Cf. *Comm.* 13 (1981), p. 125.

quoque exigentiis mundi scientifici internationalis." The answer was: "Additio proposita non videtur necessaria, quia subintellegitur."[7]

If "subintellegitur," means that the figure of the archivist is encompassed by the norm, at least for the largest dioceses.

III. NORMS FOR THE CONSERVATION OF THE DOCUMENTS (§ 3)

In the initial *Schema*, c. 24 § 2, one read: "Documenta originalia ex praedictis archivis ne efferantur, nisi ad normam c. 21" (presently 488).[8] Therefore it only spoke of "efferre" and the norms of the cited canon applied.

The *Coetus* "De Sacra Hierarchia," in *sess.* VIII, decided to modify the text, which had originally stood: "Acta et documenta de quibus in § 1 ut inspiciantur aut efferantur, serventur normae ab Episcopo dioecesano statutae."[9] Here was added the "inspicere" and it was referred to special norms.

When in the *Schema* 1980, c. 411 § 2, the text was inserted about the historical archives, the norm was also applied to that archive. But we must observe that:

— for the outlying archives it is appropriate to establish special norms;

— it may be better to use the norm of c. 488 for the historical archives by substituting "cancellarii" for "archivarii," where that figure exists.

We will now analyze the content of the text.

1. *Normae statutae*. It is thus an obligation for the diocesan bishop to issue norms on this subject. In this respect in can be suggested that not only should each diocesan bishop establish norms, but the Bishops' Conference, or the assembly of bishops for the ecclesiastical province should do so, so that the regulation is more homogeneous for all the dioceses.

2. For the parish archives, the Code establishes, though generically: "... parochus caveat ne (documenta archivi paroecialis) ad extraneorum manus perveniant." (c. 535 § 4)

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7. Cf. *Comm.* 14 (1982), p. 214.
8. Cf. *Comm.* 24 (1992), pp. 61, 87.
9. Cf. *Comm.* 24 (1992), pp. 95, 120.

ART. 3
De consilio a rebus oeconomicis et de oeconomo

ART. 3
The Finance Committee and the Finance Officer

492 **§ 1. In singulis dioecesibus constituatur consilium a rebus oeconomicis, cui praesidet ipse Episcopus dioecesanus eiusve delegatus, et quod constat tribus saltem christifidelibus, in re oeconomica necnon in iure civili vere peritis et integritate praestantibus, ab Episcopo nominatis.**

§ 2. Membra consilii a rebus oeconomicis ad quinquennium nominentur, sed expleto hoc tempore ad alia quinquennia assumi possunt.

§ 3. A consilio a rebus oeconomicis excluduntur personae quae cum Episcopo usque ad quartum gradum consanguinitatis vel affinitatis coniunctae sunt.

§ 1. In each diocese a finance committee is to be established, presided over by the diocesan bishop or his delegate. It is to be composed of at least three of Christ's faithful, expert in financial affairs and civil law, of outstanding integrity, and appointed by the bishop.

§ 2. The members of the finance committee are appointed for five years, but when this period has expired they may be appointed for further terms of five years.

§ 3. Persons related to the bishop up to the fourth degree of consanguinity or affinity are excluded from the finance committee.

SOURCES: §1: cc. 1520 §1, 1521 §1; SCCouncil Litt. circ., 20 iun. 1929, 9 (*AAS* 21 [1929] 397)
§2: c. 1521 §1
§3: c. 1520 §2

CROSS REFERENCES: c. 494

COMMENTARY

Francesco Coccopalmerio

I. THE ESTABLISHMENT OF A DIOCESAN FINANCIAL COMMITTEE (§ 1)

1. *In singulis dioecesibus constituatur consilium a rebus oeconomicis.* It is, therefore an obligation for every diocese.

2. *Cui praesidet ipse Episcopus dioecesanus eiusve delegatus.*

a) The diocesan bishop is the president of the finance committee. It is important, or perhaps only interesting, to note that in the initial provisions (*Coetus* "De Sacra Hierarchia," *sess.* VI) the financial administrator personally presided over the committee: "Consilium de rebus oeconomicis, cui praeest oeconomus, vere peritus..." But immediately the need was felt for having two different figures: the committee and the financial administrator. The "ratio" was that it is necessary to distinguish "directionem inter et exsecutionem. Prima fiat oportet per consilium, cui praeest Episcopus, altera vero per oeconomum, ne Episcopus per se negotia gerat." Thus, the committee, presided over by the bishop, makes decisions and the financial administrator executes them.[1]

b) The diocesan bishop can delegate the presidency over the committee to another. This possibility was allowed by the *Coetus* "De Sacra Hierarchia" in *sess.* VII, but we do not know the reasons therefor.[2] The delegate of the bishop can be a layperson.

c) Regarding the possibility of delegating the presidency, we can establish a spontaneous comparison with another council of the diocesan bishop: the college of consultors. The Code provides in this regard: "The diocesan bishop presides over the college of consultors" (c. 502 § 2), but without adding the provision of a delegate. Therefore, the college of consultors must be presided over, either personally by the diocesan bishop or by another ordinary with a special mandate.

3. *Et quod constat tribus saltem christifidelibus.*

a) "tribus saltem": expressly indicates the obligation of a minimum number of three, therefore, implicitly, the opportunity (contained in the expression "saltem") for the council members to be greater;

1. Cf. *Comm.* 24 (1992), p. 53.
2. Cf. ibid., p. 65.

b) "christifidelibus," that is, lay and/or clerics: all lay or all clerics, preferably, lay and clerics. In the initial *Schemata*, c. 26 § 1, it was said: "et quod constat tribus saltem personis... sive clericis sive laicis."[3] In the *Schema* 1977, c. 306 § 1, the same text appears, but with a meaningful inversion: "sive laicis sive clericis." The *Coetus* "De Populo Dei" changed *personis* to *christifidelibus* and, consequently, eliminated the wording" sive laicis sive clericis."[4] In the *Schema* 1977, c. 306 § 1, it was also said: "quorum unus saltem membrum sit Consilii presbyteralis," but it was suppressed, although allowing for the possibility or opportunity.[5]

4. *In re oeconomica necnon in iure civili vere peritis et integritate praestantibus.*

The technical qualities necessary for these committee members are opportunely indicated next to the moral qualities. And it is important to notice that the technical qualities are indicated first and then the moral. In the initial *Schemata*, c. 26 § 1, it was stated: "in re oeconomica vere peritis."[6] In the *Schema* 1977, c. 306 § 1, the addition "necnon in iure civili" appeared.[7] The expression could be completed by stating "in iure canonico et civili."

5. *Ab episcopo nominatis.*

In the selection of committee members the diocesan bishop is not obliged to hear the opinion of other members, as opposed to what happens, for example, in the appointment of the financial administrator (cf. c. 494 § 1); nor does he have to follow regulations given by the Bishops' Conference. This was in the initial *Schemata*, c. 26 § 1[8] and in the *Schema* 1977, c. 306 § 1, where it was eliminated.[9] Nevertheless, the diocesan bishop will not omit consulting with experts so as to choose committee members who are "vere periti."

6. It is opportune that the bishop establish regulations for the activities of the financial committee.

3. Cf. ibid., pp. 62, 87, 120.
4. Cf. *Comm.* 13 (1981), pp. 126–127.
5. Cf. ibid.
6. Cf. *Comm.* 24 (1992), pp. 62, 87, 120.
7. Cf. *Comm.* 13 (1981), pp. 126–127.
8. Cf. *Comm.* 24 (1992), pp. 62, 65–66, 87, 120.
9. Cf. *Comm.* 13 (1981), pp. 126–127.

II. Duration and Renewal of the Appointment (§ 2)

The norm is clear. We can add that the duration of five years is probably connected to the duration of the office of the financial administrator, which is also for five years (cf. c. 494 § 2), and is motivated by similar reasons (see commentary on c. 494). Nevertheless, the beginning and end of those offices do not necessarily coincide.

The present text was added by the *Coetus* "De Sacra Hierarchia" in *sess.* VII, without giving specific reasons: "Ad consilii durationem quod attinet animadvertit Rev.mus quartus Consultor aliquam normam esse ponendam. Item censent alii Consultores, quapropter Rev.mus Secretarius Ad. proponit, et accipitur, ut fiat § 2 cuius textus ita manet approbatus: 'Nisi Episcoporum Conferentia aliter statuerit, membra consilii a rebus oeconomicis ad quinquennium nominentur, sed expleto hoc tempore ad alia quinquennia assumi possunt.'"[10] The section "Nisi... statuerit" was suppressed by the *Coetus* "De Populo Dei," likewise without giving reasons.[11]

III. Incompatibility Due to Consanguinity or Affinity (§ 3)

The "ratio legis" is possibly the fear of a conflict of interest between the committee members and the diocesan bishop. This § 3 is found for the first time in the *Schema* 1977, c. 306 § 3.[12]

10. Cf. *Comm.* 24 (1992), p. 66.
11. Cf. *Comm.* 13 (1981), p. 127.
12. Cf. ibid.

493 **Praeter munera ipsi commissa in Libro V "De bonis Ecclesiae temporalibus," consilii a rebus oeconomicis est quotannis, iuxta Episcopi dioecesani indicationes, rationem apparare quaestuum et erogationum quae pro universo dioecesis regimine anno venturo praevidentur, necnon, anno exeunte, rationem accepti et expensi probare.**

§ 1. In each diocese a finance committee is to be established, presided over by the diocesan bishop or his delegate. It is to be composed of at least three of Christ's faithful, expert in financial affairs and civil law, of outstanding integrity, and appointed by the bishop.

§ 2. The members of the finance committee are appointed for five years, but when this period has expired they may be appointed for further terms of five years.

§ 3. Persons related to the bishop up to the fourth degree of consanguinity or affinity are excluded from the finance committee.

SOURCES: —

CROSS REFERENCES: cc. 494, 1277, 1281 §2, 1287 §1, 1292 §1, 1305, 1310 §2

COMMENTARY

Francesco Coccopalmerio

1. *Praeter munera ipsi commissa in Libro V De bonis Ecclesiae temporalibus.* Regarding those *munera*, we can refer to cc. 1277, 1281 § 2, 1287 § 1, 1292 § 1, 1305, 1310 § 2. This initial section appears for the first time in the *Schema* 1977, c. 307.[1]

2. *Quotannis ... rationem apparare quaestuum et erogationum quae ... anno venturo praevidentur.*

a) "*Quae... anno venturo praevidentur*": that expression designates the budgets;

b) "quaestuum et erogationum": refers to income and expenses, or inflow and outflow.

c) "rationem apparare": this is precisely a provision for what will be the income and expenses.

3. *Necnon, anno exeunte, rationem accepti et expensi probare.*

1. Cf. *Comm.* 13 (1981), p. 127.

a) "Anno exeunte": at the end of the year; this is the final accounting;

b) "accepti et expensi": here net income and expenses are accounted for.

4. *Iuxta Episcopi dioecesani indicationes.* That is, according to the directives given by the diocesan bishop to the finance committee. This seems less understandable since it is precisely the committee that must inform the bishop on these issues. Probably the expression is equivalent to "having informed the diocesan bishop" or "in agreement with him."

The expression "iuxta Episcopi dioecesani indicationes" was not in the *Schema* 1977, c. 307, and was added by the *Coetus* "De Populo Dei," without stating reasons.[2]

5. *Pro universo dioecesis regimine.* The expression is not easily understood. The literal translation cannot be other than: inflow and outflow relative to the entire governance of the diocese, namely, all that serves to govern the diocese.

But we have to ask ourselves, who is the juridical person spoken of here? Is it the juridical person "diocese" or all the juridical persons present in the range of the diocese (and in the first place the parishes)? In the first case, it would be talking about the budget and income statement of the juridical person "diocese," in the second, the norm would refer to a budget and a joint income statement for all the juridical persons present in the range of the dioceses.

It seems that the first case would be the only possible solution. And that, although, pursuant to c. 1287 § 1, the administrators of ecclesiastical goods "have the duty of rendering an account each year to the local ordinary and submit this to an examination of the finance committee."

Likewise, there is nothing else published in *Communicationes* that casts a greater light on the meaning of the expression "pro universo dioecesis regimine." In the initial *Schema* l, c. 27 § 1, the expression "pro universae dioecesis administratione" appeared.[3] In *sess.* VII, the *Coetus* observed: "textum ita exaratum esse ac si ordinatio totius activitatis pastoralis, per respectum ad res oeconomicas, penderet a voluntate huiusmodi Consilii, quod esset absonum. Respondet Rev.mus Secretarius Ad. Episcopum esse praesidem Consilii. Attamen ... proponit ut ... emendetur textus: 'pro universo dioecesis regimine,' quod ex una parte aptius limitat competentiam Consilii, ex alia vero parte comprehendit etiam expensas pro missionibus faciendas. Propositio ab omnibus recipitur."[4]

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2. Cf. ibid.
3. Cf. *Comm.* 24 (1992), p. 62.
4. Cf. ibid., p. 66.

In any case, from this note it is not clearly deduced what the conceptual difference between "administratio" and "regimen" is, as indicated by the *Coetus*.

One should notice, however, that it is a matter of expenses for the needs of the diocese, understood as central activities (and ad extra: "pro missionibus").

In the same sense of expenses for the needs of the diocese it also appeared in § 2 of that c. 27: "Eiusdem Consilii assensu, eget Episcopus dioecesanus ut expensas faciat extraordinarias, quas scilicet ob adiuncta specialia in ratione erogationum non praevisa admittendas aestimet."[5] The text disappeared in the *Schema* 1977, c. 307.[6]

6. Besides the provision of c. 493, it is the competence of the finance committee to define the general criteria according to which the financial offices must administer the property of juridical person of the "diocese." In effect, c. 494 § 3 establishes it thus: "Oeconomi est, secundum rationem a consilio a rebus oeconomicis definitam, bona dioecesis... administrare." (see commentary on c. 494)

5. Cf. ibid., pp. 62, 66, 88, 120.
6. Cf. *Comm.* 13 (1981), p. 127.

494 **§ 1. In singulis dioecesibus ab Episcopo, auditis collegio consultorum atque consilio a rebus oeconomicis, nominetur oeconomus, qui sit in re oeconomica vere peritus et probitate prorsus praestans.**

§ 2. Oeconomus nominetur ad quinquennium, sed expleto hoc tempore ad alia quinquennia nominari potest; durante munere, ne amoveatur nisi ob gravem causam ab Episcopo aestimandam, auditis collegio consultorum atque consilio a rebus oeconomicis.

§ 3. Oeconomi est, secundum rationem a consilio a rebus oeconomicis definitam, bona dioecesis sub auctoritate Episcopi administrare atque ex quaestu dioecesis constituto expensas facere, quas Episcopus aliive ab ipso deputati legitime ordinaverint.

§ 4. Anno vertente, oeconomus consilio a rebus oeconomicis rationem accepti et expensi reddere debet.

§ 1. In each diocese a financial administrator is to be appointed by the bishop, after consulting the college of consultors and the finance committee. The financial administrator is to be expert in financial matters and of truly outstanding integrity.

§ 2. The financial administrator is to be appointed for five years, but when this period has expired, may be appointed for further terms of five years. While in office he or she is not to be removed except for a grave reason, to be estimated by the bishop after consulting the college of consultors and the finance committee.

§ 3. It is the responsibility of the financial administrator, under the authority of the bishop, to administer the goods of the diocese in accordance with the plan of the finance committee, and to make those payments from diocesan funds which the bishop or his delegates have lawfully authorised.

§ 4. At the end of the year the financial administrator must give the finance committee an account of income and expenditure.

SOURCES: §4: c. 1525 § 1

CROSS REFERENCES: cc. 192–195, 482, 636, 1263, 1273–1310

COMMENTARY

Francesco Coccopalmerio

I. THE NEED TO APPOINT A FINANCIAL ADMINISTRATOR (§ 1)

1. *In singulis dioecesibus.* Regarding the chancellor, the Code provides: "In qualibet curia constituatur cancellarius" (c. 482 § 2); and regarding the financial administrator: "In singulis dioecesibus." The second expression is completely equivalent to the first: the office of financial administrator is an office of the diocesan curia. Therefore, what is needed is greater terminological uniformity.

2. *Ab Episcopo nominetur.* Therefore, this is an obligation.

3. *Auditis collegio consultorum atque consilio a rebus oeconomicis.* In the initial *Schemata,* c. 28 § 1 only stated: "audito Consilio a rebus oeconomicis";[1] in the *Schema* 1977, c. 308 § 1, there was added: "auditis Collegio consultorum... atque Consilio a rebus oeconomicis."[2] However, for the appointment of the chancellor nothing similar was established (cf. c. 482).

4. *Qui sit in re oeconomica vere peritus et probitate prorsus praestans.*

a) The necessary qualities are opportunely indicated, not only moral, but also technical qualities ("in re oeconomica vere peritus"). There could be added for the members of the financial committee, "in iure civili" or better, "in iure canonico et civili."

b) Likewise, there should be provisions regarding the technical aptitudes of the chancellor and the notaries (they are only required to be "integrae famae et omni suspicione maiores": c. 483 § 2), and the remaining officials of the curia (of whom nothing is said in cc. 470–471).

c) The financial administrator can also be a layperson. This was allowed since the beginning without difficulty: "Rev.mus Secretarius Ad. statuendum esse censet ut in unaquaque dioecesi habeatur oeconomus, vir vere peritus, qui laicus esse potest."[3] In the initial *Schemata,* c. 28 § 1,[4] and in the *Schema* 1977, c. 308 § 1, it was said: "... oeconomus, qui sit, sive clericus sive laicus." The *Coetus* "De Populo Dei" decided "to suppress 'sive clericus sive laicus' for being pleonastic."[5]

1. Cf. *Comm.* 24 (1992), pp. 62, 88, 121.
2. Cf. *Comm.* 13 (1981), p. 128.
3. Cf. *Comm.* 24 (1992), p. 53.
4. Cf. ibid., pp. 62, 88, 121.
5. Cf. *Comm.* 13 (1981), p. 128.

5. It is also useful to refer here to c. 423 § 2: "The diocesan administrator is not to be at the same time the financial administrator. Accordingly, if the financial administrator of the diocese is elected Administrator, the finance committee is to elect another temporary financial administrator."

II. DURATION AND RENEWAL OF THE OFFICE (§ 2)

1. *Oeconomus nominetur ad quinquennium, sed expleto hoc tempore ad alia quinquennia nominari potest.*

a) Therefore,

— the first appointment must be for five years;

— the appointment may be renewed for other five year periods of time;

— each renewal of appointment, even for several renewals, must be for five years.

In the initial text, c. 28 did not provide for this norm,[6] which was added by the *Coetus* "De Sacra Hierarchia" in *sess.* VII.[7]

b) What is the reason for an appointment "ad tempus"? It seems to be twofold. On one hand, the provision that the designated financial administrator might not turn out to be the appropriate person for this difficult task, thus he or she should be replaced. On the other hand, the advisability of not making the diocesan bishop intervene with a removal process (on this point, see above) to guarantee the autonomy of the financial administrator before the bishop in administrative activity. In effect, if the bishop could easily remove the financial administrator, it would be as though the latter's worked under the former's close control since the decision to remove the person would become in the end for the bishop a means of expressing his disapproval regarding the administrative decisions of the financial administrator, who, consequently, would feel inclined to look for another way to please the bishop. This argument is suggested by virtue of which the *Coetus* "De Sacra Hierarchia" introduced a fixed time: "Rev.mi tertius et secundus Consultores quaestiones ponunt de amotione oeconomi, qui gaudere quidem debet necessaria independentia personali, atque de unicitate eiusdem oeconomi, quod forsan prudens non videtur.

"Ad primam quaestionem solvendam approbatur ut nova fiat paragraphus, quae sit § 2, sub his verbis redacta: 'Oeconomus nominetur ad

6. Cf. *Comm.* 24 (1992), p. 62.
7. Cf. ibid., p. 67; also cf. p. 53.

quinquennium, sed expleto hoc tempore ad alia quinquennia nominari potest; durante munere ne amoveatur nisi ob gravem causam ab Episcopo, audito Consilio a rebus oeconomicis, aestimandam.'"

"Ad quaestionem denique de unica persona ad munus oeconomi persolvendum, animadvertit Rev.mus Secretarius Ad. quod Episcopus nominare semper potest vice-oeconomum, sed non videtur necessarium ut norma specialis detur de hac re."[8]

With the Plenary of 1981 in mind, a Father proposed: "Attenta specifica qualificatione huius peculiaris muneris, oeconomus nominetur absque temporis limitatione." The response was: "Maneat textus, quia norma est satis ampla: dicitur enim 'ad alia quinquennia nominari potest', sine alia determinatione. Sed prudentia suadet ut nominatio fiat ad tempus, licet renovari possit quoties id opportunum sit."[9]

c) The appointment of the chancellor is for an indeterminate time (c. 482 § 1); why is the appointment of the financial administrator for a fixed time? It is not easy to understand this, or the different "ratio legis," in two cases that seem similar regarding the importance of the office. It seems to me, rather, that the appointment "ad tempus" should be for all the officials of the diocesan curia.

d) When the financial administrator is a layperson it will be necessary to have a civilly valid employment contract for a fixed time of five years and likewise for possible renewals.

2. *Durante munere ne amoveatur.* This deals with the removal spoken of in cc. 192–195, not of the transfer regulated in cc. 190–191. And this is especially so for the case of the financial administrator's being a layperson.

3. *Nisi ob gravem causam.* Pursuant to the provisions of c. 193 §§ 1–2, it is required that the removal not be carried out "nisi ob gravem causam."

4. *Ab Episcopo aestimandam, auditis collegio consultorum atque consilio a rebus oeconomicis.* The bishop must assess the gravity of the cause, while requesting the opinion of his council members. In the initial *Schemata*, c. 28 § 2 only stated: "audito Consilio a rebus oeconomicis";[10] in the *Schema* 1977, c. 308 § 2, there was already added: "auditis collegio consultorum atque consilio a rebus oeconomicis."[11]

5. While in the case of the chancellor the powers of diocesan administrator were established (cf. c. 485), nothing was said about the possible

8. Cf. ibid., p. 67.
9. Cf. *Comm.* 14 (1982), p. 214.
10. Cf. *Comm.* 24 (1992), pp. 67, 88, 121.
11. Cf. *Comm.* 13 (1981), p. 128.

removal of the financial administrator. I consider c. 485 applicable by analogy.

6. It is useful to recall, finally, that in the case of an office conferred for a fixed time, "loss of office by reason of the expiry of a predetermined time ... has effect only from the moment that this is communicated in writing by the competent authority" (c. 186). In this case, the competent authority is the diocesan bishop who made the appointment.

III. OFFICIAL RESPONSIBILITIES OF THE FINANCIAL ADMINISTRATOR (§ 3)

1. *Oeconomi est.* Here the subject matter of the office of financial administrator is established. The provision of c. 1278 must be remembered at the same time, but we will talk about that later on (see above, no. 6).

To interpret the "mens" of the legislator, it is useful to refer to the history of this institution. The *Coetus* "De Sacra Hierarchia" began the examination of this theme in *sess.* VI. While trying to interpret the unclear and too short note that appears in *Communicationes* 24 (1992), pp. 53–54, we can indicate the following points:

It seems that the motive for creating a subject for the activity of the administration of diocesan goods was strange, but it was intended to take that task from the bishop to avoid the risk that the bishop could administer as his own what actually belongs to the Church: "Rev.mus Secretarius Ad. determinandam esse censet independentiam huius consilii ab Episcopo, quia agitur de bonis Ecclesiae sive Populi Dei, et ideo Episcopus ea ut sua tractare non debet. Proponit ergo organum simile sic dictae 'corte dei conti.'" This is therefore an organ of control.

The *Coetus* "De Sacra Hierarchia" thought about two figures: the finance committee and the financial administrator. At first the two figures appeared based on only one since the financial administrator was thought of as presiding over the committee ("Consilium de rebus oeconomicis, cui praeest oeconomus, vere peritus...").

But soon the two figures were distinguished: on one hand the finance committee, under the presidency of the bishop; on the other, the financial administrator. The reason for the separation was the following: "distinguendum esse... directionem inter et exsecutionem. Prima fiat oportet per consilium, cui praeest Episcopus, altera vero per oeconomum, ne Episcopus per se negotia gerat." Direction and execution are referred to here precisely as the revenue and expenses of the diocese. Thus, the finance committee prepares the budgets for income and expenses and approves the final account. For his or her part, the financial administrator

carries out the adopted decisions, namely, makes the expenditures ordered by the authority. It should be pointed out:

— the presidency of the committee granted to the diocesan bishop abolishes the idea of the committee as independent, as it is an organ under the control of the bishop himself;

— the expression "ne Episcopus per se negotia gerat" is limited to avoiding the situation where the bishop directly makes the *expenditures*, while the initial intention was to exclude the bishop from making *administrative* decisions.

In any case, the role of the committee, and especially that of the financial administrator, appears to be very limited.

In the *Schema* 1977, c. 308 § 3, we find an important addition: "bona dioecesis sub auctoritate Episcopi administrare."[12] And it can be observed, as a curiosity, that even the *Schema* 1982, c. 494 § 3, after the word "administrare" did have the conjunction "atque." The addition "bona... administrare" very much broadens the office of the financial administrator.

2. *Administrare.*

a) According to the obvious concept, on the other hand—to carry out the activities aimed at using ecclesiastical goods for the purposes of the juridical person to whom they belong. Therefore, we can indicate the following fundamental activities (pursuant to the norms of book V, particularly cc. 1281ff):

— recognize what those goods are, and their condition (cf. c. 1283, 2°);

— acquire or alienate property;

— dispose of goods for various purposes;

— preserve, restore, or transform goods;

— draft and preserve the documents relative to the administration of goods by rendering an account to the local ordinary.

b) It deals with ordinary and extraordinary administration because the text does not distinguish; likewise, we should not do so.

3. *Bona dioecesis.* We must ask ourselves what does the expression "bona dioecesis" mean here and, therefore, what does "dioecesis" mean?

a) Previously we stated that in c. 494 the term "dioecesis" is used two times: in § 1 ("in singulis dioecesibus") and in § 3 ("bona dioecesis"). It is important to determine the meaning of the term in those two places.

b) We will look at the two texts:

12. Cf. ibid.

— in § 1, "in singulis dioecesibus" clearly means in every diocese as a community of the faithful (cf. c. 369: "populi Dei portio") and therefore, understood also as a territorial range (cf. c. 372);

— what does "bona dioecesis" mean in § 3?

c) To reach an answer we must make several prior observations. The diocese is the juridical person (cf. c. 373) and has its own "bona." However, in the range of the diocese exist other juridical persons, each one also within its "bona." Thus, the expression "bona dioecesis" of § 3 could mean:

— the goods of the diocese, understood as a range in which exist different juridical persons in the range of the diocese, that is, understood as the juridical person "diocese";

— the goods of the diocese, understood as the range in which various juridical persons exist, each with its own property, and therefore, the property of the juridical persons existing in the range of the diocese.

Which of these two meanings is correct?

d) The answer can be deduced from cc. 1279 § 1 and 1280:

— canon 1279 § 1: "The administration of ecclesiastical goods pertains to the one with direct power of governance over the person to whom the goods belong, unless particular law or statutes or legitimate custom state otherwise, and without prejudice to the right of the ordinary to intervene where there is negligence on the part of the administrator."

— canon 1280: "Every juridical person is to have its own finance committee, or at least two counselors, who are to assist in the performance of the administrator's duties, in accordance with the statutes."

From these texts it follows that each juridical person has its own administrators. Therefore the financial administrator is the administrator of the "bona dioecesis," but understood as the goods of the juridical person "diocese" and not as the goods of the various juridical persons existing in the range of the diocese. That is the meaning of the expression "bona dioecesis."

e) It must be kept in mind, moreover, that in some particular churches, before the present Code, a juridical person existed (frequently called "diocesan work") that held title to the goods intended for the needs of all the diocese. That juridical person can still survive. Moreover, more than one can exist. Those juridical persons have their own administrators and, therefore, they are not administered by the financial administrator. Nevertheless, it is opportune to provide coordination between them and the juridical person "diocese" to arrive at a coordinated administration and consolidated balance sheet for goods that serve the totality of the diocese.

4. *Sub auctoritate Episcopi.*

a) We stated previously that:

— the diocesan bishop is the legal representative of the juridical person "diocese" (c. 393);

— it is also the administrator of the juridical person "diocese." This second fact follows from c. 1277, in relation with cc. 1279 § 1 and 1280.

In effect, in c. 1277 it is stated:

— "Episcopus dioecesanus quod attinet ad actus administrationis ponendos ..." From that expression it is deduced that the diocesan bishop is the one who does the acts of administration; he is the administrator;

— "qui, attento statu oeconomico dioecesis, sunt maioris momenti..." From that expression it is deduced that the diocesan bishop is the administrator of the goods of the "diocese." But of the goods of the juridical person of the "diocese" or of the goods of the juridical person within the territory of the diocese? The answer is easy: since cc. 1279 § 1 and 1280 state that every juridical person has its own administrator, c. 1277 cannot be talking about other than the juridical person "diocese": in conclusion, the diocesan bishop is the administrator of the goods of the juridical person "diocese."

b) From these premises arises the following problem: if the diocesan bishop is the administrator of the juridical person "diocese" (c. 1277) and, at the same time, the financial administrator administers the goods of that same juridical person (c. 494 § 3), what is the relationship between them? Canon 494 § 3 responds: the financial administrator administers "sub auctoritate Episcopi." What does that mean?

c) The problem moves toward the correct interpretation of the expression "sub auctoritate Episcopi." That expression, such as it literally appears in c. 494 § 3, does not mean anything specific in the case of the financial administrator. In effect, every administrator of public juridical persons subject to the diocesan bishop (cf. cc. 1263, 1276, 1303 § 2) is normally "sub auctoritate Episcopi" regarding the regulations (cf. c. 1276 § 2); oversight (cf. cc. 1276 § 1, 1283, 1° and 3°, 1284 § 2, 9°, 1287, 1301–1302); specific authorizations for certain acts (cf. cc. 1288, 1291–1297, 1304–1306, 1308–1310). The direct administration by the diocesan bishop is provided for in particular cases or in the case of negligence (cf. c. 1279 § 1), or in the case of absences of administrators (cf. cc. 1279 § 2, 1278).

d) For those reasons, should we conclude that, effectively, the expression "sub auctoritate Episcopi," as it is stated in the present canon, does not mean anything special regarding the financial administrator?

There are two possible answers:

— it does not mean anything specific, and therefore, it only means what we have just indicated for all the administrators;

— it means something more specific, which cannot be other than: "instead of, in place of the diocesan bishop."

In effect, in the case of the administration of the goods of the juridical person "diocese" the following is confirmed:

— the diocesan bishop is the administrator of the goods of the juridical person "diocese" (see above);

— the financial administrator administers the goods of the juridical person "diocese" (cf. c. 494 § 3).

The only way to understand the simultaneous presence of two administrators is to consider that the second one administers in the place of the first, taking his place. Why? For the same reason that the diocesan bishop creates the offices of the curia. Since the diocesan bishop cannot personally do everything, since moreover he is not expert in everything, and since he must promote collaboration between clerics and laity, he entrusts the various activities to several expert subjects. Regarding the administration of the goods of the juridical person "diocese" (of which the diocesan bishop is the legal representative and first administrator) the same thing occurs.

A modification could be proposed to the text in this sense: "bona dioecesis loco Episcopi dioecesani et sub eius directione administrare" (cf. likewise the drafting of c. 636: "sub directione respectivi Superioris").

e) Having arrived at this point, we must specify what it means for the financial administrator to administer instead of the bishop or in his place. That situation or vicarious circumstance can mean essentially two things:

— the financial administrator performs the work prior to the formal acts of administration and afterwards the bishop carries out the formal acts by signing them;

— the financial administrator also carries out the formal acts by signing them himself.

In this second case, the financial administrator must receive from the diocesan bishop empowerment to act.

Let's take an example: the juridical person "diocese" has to sell some property. Thus:

— in the first case, the financial administrator evaluates the sale, takes care of the evaluation to be carried out, looks for the best buyer, asks for the necessary authorizations, has the deed prepared, and finally the bishop signs the deed;

— in the second case, the financial administrator, by virtue of his or her being empowered, also signs the notarial deed.

5. *Secundum rationem a consilio a rebus oeconomicis definitam.* The "general criteria" ("secundum rationem... definitam") regarding the

administration of the goods of the juridical person "diocese" must be established by the finance committee. What must be understood by the expression "secundum rationem definitam"? Our translation "general criteria" indicates that the finance committee:

— establishes the directions that must be borne in mind in specific decisions;

— does not express its judgment on each one of the specific decisions.

Let's take an example regarding the use of money. The finance committee establishes: it is better that the money is not put into a bank, but rather invested in stocks. The financial administrator decides how much money is put into the bank and how much invested in stocks, as well as which stocks to be acquired.

6. *Atque ex quaestu dioecesis constituto expensas facere, quas Episcopus aliive ab ipso deputati legitime ordinaverint.*

a) "Quaestus dioecesis constitutus" is the cash income of the diocese.

b) "Aliive ab ipso deputati": Who are they? Is not the financial administrator enough?

For a better understanding of the text, an explanation of its origin can help. The initial text, c. 28 § 2, said: "expensas facere quas loci Ordinarii legitime ordinaverint."[13] The *Coetus* "De Sacra Hierarchia," in *sess.* VII, specified that "loci Ordinarii" are all the ordinaries present in a certain diocese (therefore, besides the diocesan bishop, the vicars general and episcopal vicars). Likewise it was specified that each ordinary can order expenses in the scope of his competency. But this was an object of criticism because there could be a lack of managerial unity for ordering the expenses of the diocese, due to mixed competences. The criticism was accepted and therefore the expression "expensas facere quas Episcopus aliive ab ipso ad hoc deputati legitime ordinaverint" was adopted.[14]

Therefore, the diocesan bishop orders the expenditures, or he delegates another subject ("aliive"). Consequently, unity is safeguarded since it is the bishop who delegates. Another subject ("aliive"): by itself the expression does not require that it be an ordinary. It would have been necessary to be "aliusve ordinarius."

Delegated by the bishop: if all the ordinaries present in the diocese were delegated by the diocesan bishop "semel pro semper," would managerial unity be preserved in making the expenditure for the diocese? In-

13. Cf. *Comm.* 24 (1992), p. 62.
14. Cf. ibid., p, 66.

stead should the bishop's approval be required for each expenditure ordered, so that, in the end, he is the only one who orders expenditures?

It could be concluded that each ordinary, in the range of his authority, judges the advisability of certain expenditures. He submits them to the judgment of the diocesan bishop, then once the bishop's consent is obtained, the ordinary orders the expenditure to be made by the financial administrator.

c) It is easy to see that this part of the administrative activity of the financial administrator is much less than what we have described above, and that it is indicated by the expression "bona dioecesis ... administrare." In effect, the financial administrator of the goods of the diocese, the financial administrator performs a prominent function and one of great responsibility, while here he or she appears as only an executor-payor.

7. It is necessary to add the provision of the canons that follow to what we have stated regarding the office of financial administrator:

— c. 1278: "Besides the duties mentioned in c. 494 §§ 3 and 4, the diocesan bishop may also entrust to the financial administrator the duties mentioned in c. 1276 § 1 and 1279 § 2."

— c. 1276 § 1: "Ordinaries must carefully supervise the administration of all the goods which belong to public juridical persons subject to them...";

— c. 1279 § 2: "Where no administrators are appointed for a public juridical person by law or by the documents of foundation or by its own statutes, the Ordinary to which it is subject is to appoint suitable persons as administrators for a three-year term. The same persons can be reappointed by the Ordinary."

Thus:

— c. 1276 § 1 contemplated all public juridical persons, but only regarding oversight, not for administration;

— c. 1279 § 2 considers administration, but only some public juridical person and only in case there is a lack of administrators.

8. *The diocesan administrative office*

a) The financial administrator, in his or her function as administrator of the juridical person, is one person, but can be assisted by others. That will depend on the amount of goods that belong to the "diocese." In cases where the financial administrator is assisted by other persons, the financial administrator as an individual person is the holder of the office of administrator, while the other people perform an auxiliary function.

b) Financial administrators in their function as overseers are normally, except in small dioceses, assisted by other people. The reason is that he or she is to oversee all the public juridical persons subject to the diocesan bishop. This configures a more or less complex structure, which

we can call the "diocesan administrative office." The bishop can also limit himself to constituting a vice-financial administrator, without coming to constitute a complex structure as a "diocesan administrative office."[15]

c) There can also be the case that the financial administrator is someone different from the manager of the diocesan administrative office who is concerned only with the provisions c. 494.

IV. ANNUAL RENDERING OF ACCOUNTS (§ 4)

This is a general norm, but it seems that it must be given all the content that a modern administration requires on the subject of rendering of accounts, balance sheet, income statements, and budgets.

In can be useful to explain in a synthetic manner the subjects and their respective roles in the administration of the juridical person "diocese" as indicated in cc. 493 and 494 § 3. These subjects are: the diocesan bishop, the financial administrator, and the finance committee. Their functions can be synthesized in this manner:

1. The diocesan bishop is the legal representative (cf. c. 393) and administrator of the juridical person "diocese" (cf. c. 1277).

2. The financial administrator is the administrator of the juridical person "diocese" in the sense that he or she substitutes for the diocesan bishop; and he or she can receive powers from the diocesan bishop to take action (cf. c. 494 § 3). In every case the financial administrator administers:

a) under the authority or more specific terms under the direction of the diocesan bishop (cf. c. 494 § 3);

b) pursuant to the criteria defined by the finance committee (cf. ibid.);

c) at the end of the year he or she informs the finance committee.

3. Regarding the revenues and expenditures of each year:

a) the finance committee, at the beginning of the year, prepares the budget, that is, it establishes the areas of expenditures in accordance with income (c. 493);

15. There is an indication of this in *Comm.* 24 (1992), p. 67.

b) the financial administrator executes what the finance committee has decided, and it is up to him or her "to make those payments from diocesan funds which the bishop or his delegates have lawfully authorised" (c. 494 § 3);

c) "At the end of the year the financial administrator must give the finance committee an account of income and expenditure" (c. 494 § 4);

d) the finance committee, at the end of the year, approves the account of revenues and expenditures (c. 493).

CAPUT III
De consilio presbyterali et de collegio consultorum

CHAPTER III
The Council of Priests and the College of Consultors

495 **§ 1. In unaquaque dioecesi constituatur consilium presbyterale, coetus scilicet sacerdotum, qui tamquam senatus sit Episcopi, presbyterium repraesentans, cuius est Episcopum in regimine dioecesis ad normam iuris adiuvare, ut bonum pastorale portionis populi Dei ipsi commissae quam maxime provehatur.**

§ 2. In vicariatibus et praefecturis apostolicis Vicarius vel Praefectus constituant consilium ex tribus saltem presbyteris missionariis, quorum sententiam, etiam per epistolam, audiant in gravioribus negotiis.

§ 1. In each diocese there is to be established a council of priests, that is, a group of priests who represent the presbyterium and who are to be, as it were, the bishop's senate. The council's role is to assist the bishop, in accordance with the law, in the governance of the diocese, so that the pastoral welfare of that portion of the people of God entrusted to the bishop may be most effectively promoted.

§ 2. In vicariates and prefectures apostolic, the Vicar or Prefect is to appoint a council composed of at least three missionary priests, whose opinion, even by letter, he is to hear in the more serious affairs.

SOURCES: §1: *LG* 28; *CD* 27, 28; *PO* 7, 8; *ES* I, 15 §1; *PS* 5, 8; *DPMB* 203
§2: c. 302

CROSS REFERENCES: —

COMMENTARY

Mario Marchesi

I. THE SOURCES OF THE NORMATIVE REGARDING THE PRESBYTERAL COUNCIL AND THE COLLEGE OF CONSULTORS (cc. 495–502)

1. The Council said few things about the council of priests and nothing about its structure.[1] In any case, the requirement of a new council of priests that assists the bishop in the governance of the diocese is clearly documented in the wishes and proposals sent to by the future conciliar fathers in the preparatory period for the Council. In the *Acta et Documenta Concilio Oecumenico Vaticano II Apparando,* there can be found at least seventeen more or less explicit allusions to the need to create that kind of council.[2]

The Decree *Christus Dominus* takes into consideration the Episcopal Curia and the diocesan councils. In no. 28 we find a reference, barely outlined, regarding the necessity of some organization, different from the existing councils, with the purpose of specifying the bishop-priests relationship for efficient pastoral action: "... let the bishop call the priests into dialogue, especially about pastoral matters. This he should do not only on a given occasion but at regularly fixed intervals insofar as this is possible." With this last sentence, there is clearly shown the possibility and advisability of having particular assemblies of clergy and of having consultations at least with a group of priests.

The Decree *Presbyterorum Ordinis* explicitly speaks of a council of priests in no. 7 § 2. It says: "... there should be, in a manner suited to today's conditions and necessities, and with a structure and norms to be determined by law, a body or senate of priests representing all the priests. This representative body by its advice will be able to give the bishop effective assistance in the administration of the diocese."

Keeping in mind the evolution of the text, the following observations can be made: the existence of a council close to the bishop for governance of the diocese is not new in the life of the Church; the normative statement about the council does not refer both to the creation of a new institution and the reform of everything that already existed. The council for the

1. Cf. J. BEYER, "De consilio presbyterii adnotationes," in *Periodica* 40 (1970), pp. 29–57.
2. Cf. *Acta et documenta Concilio Oecumenico Vaticano II apparando,* Series I, Appendix, vol. II, P. I, pp. 415–530.

bishop (though not new) should be presented with a new physiognomy to be adapted to present circumstances and needs. It should assume a juridical form and regulation that will have to be determined so that its members will have to be priest-representatives of the presbyterium. Regarding its power, it is said that the council will help the bishop "with its advice" in the governance of his diocese. This council must not be confused with the pastoral council that is spoken of in the Decree regarding the pastoral office of bishops.[3]

2. *The Motu proprio Ecclesiae Sanctae* (August 6, 1966) concerns the council of priests in the first part, nos. 15 and 17. The following can be emphasized: for the first time the term "presbyteral" is used to qualify the council (this adjective refers to the subject matter, it means that this council is composed of priests). Its institution is obligatory for each diocese; the faculty is left to each bishop for fixing the particular norms and methods for its constitution and functionality. The council will be composed of representative-priests of the presbyterium, but they can also be religious "to the extent that they have the care of souls and take part in the works of the apostolate." It is a consultative organ by nature and therefore, its decisions are not obligatory for the bishop, nor for the presbyterium, nor the other faithful of the diocese. If the episcopal see is vacant, the council of priests ceases in its functions, except for, in circumstances approved by the Holy See, when it is confirmed by the chapter vicar or the apostolic administrator. The constitution of a new council of priests is up to the new bishop; to the extent they are not reformed, the existing councils pursuant to the law in force maintain their competence; it is provided that the bishop must consult the council of priests for the proper distribution of goods, even when it involves a return of goods (*ES* I, 8); and that he is to hear his chapter or council of priests when it involves separating parishes united "pleno iure" into the chapters of canons (*ES* I, 21 § 2).

3. A Letter dated January 15, 1969, was sent by the SCCong to the Presidents of the Bishops' Conferences, which the bishops were asked to transmit to the cited Congregation notes and observations regarding the experience of the new organization. On 10 October of the same year, this dicastery held a plenary Congregation to deal with the principal problems relative to the council of priests. A circular letter dated 10 April 1970, *Presbyteri Sacra*, was sent by the prefect of the S. Congregation to the Presidents of the Bishops' Conferences, which was divided into ten points and three conclusions, and dealt with several fundamental points of the new council.[4]

3. Cf. F. BOULARD, "La Curie et les conseils diocésains," in *La Charge pastorale des évêques* (Paris 1969), pp. 247–270; J. FRISQUE, "Le décret Presbyterorum Ordinis. Histoire et commentaire," in *Les Prêtres* (Paris 1968), pp. 123, 189; A. CATTANEO, *Il Presbiterio della Chiesa particolare* (Milan 1993), pp. 25–104.

4. *AAS* 62 (1970), pp. 459–465.

The theological assumptions are traced in the Introduction; later its obligatory nature is presented, since it is an institutionally constituted sign of hierarchical communion and a suitable organization for our times. Regarding its composition, it said that it must represent the entire presbyterium as an expression of its opinions and various experiences, and that the direct selection of members by the clergy and other officially designated members being possible, it will be in its power both to advise, regarding the creation of norms and to propose principal issues. However, they will not deal with issues that by their nature are discretional. It is reaffirmed that the council of priests is of itself a consultative organ, except when otherwise provided by the universal law of the Church or if there is a particular concession of the bishop in individual cases. It must be noted that, according to this Letter, the council is not conceived of as just another council next to those already existing, but as a consultative organ of greater worth than the others; in this sense, the presbyteral council alone receives the title and the office of being "senatus Episcopi in regimine dioecesis." In conclusion, several objectives are suggested; to be instituted where it does not yet exist and to prepare its statutes. The bishops' Conferences suggest the matters of greatest importance that must be dealt with in the council of priests are its internal regulations, the periodicity of its meeting, its relationship to the other diocesan organizations and to all the priests of the diocese.

4. After the circular Letter, the reference to the council of priests appears in another two ecclesiastical documents cited among the sources for the canons: the Directory *Ecclesiae Imago* and the directive note *Mutuae Relationes*. It is enough just to cite them since they add nothing to the nature and structure of the council. It must also be observed that the Synod of bishops of November 30, 1971, dealt with the council of priests in the document *Ultimis temporibus*, but it has not been cited among the sources.[5]

We will move on to the content of the first of the canons devoted to the council of priests

II. Dispositions of c. 495

1. *Establishment of the presbyteral council*

The directive of the Code is precise: the council of priests is obligatory in each diocese. In the vicariates and apostolic prefectures it must be

5. *AAS* 63 (1971), pp. 898–942.

composed of at least three missionaries and can be can also be consulted by letter.

The terminology used in the particular norms that establish the form of constitution is not always uniform: sometimes convocation is spoken of and at other times "constitution"; instead of "presbyteral" sometimes it is "presbyteral"; instead of "decree" sometimes "disposition" is spoken of or of "letter," or of "norms to..."; in some cases, the members of episcopal appointment are established before elections, in other cases, afterwards; on occasion, formal constitution is had by decree, in others, by mere publication of the names in the official organ of the diocese, or pursuant to other methods.

It is opportune that the formal procedure be suited to make clear that a council of priests has been constituted. To do so, an itinerary of three stages should be followed:

a) First, an episcopal decree of convocation is necessary that establishes the times and methods of election, which should be realized pursuant to the norms established for the individual case, and that it will have to be published.

Observe that it is different to speak of a convocation rather than a "constitution." The first term makes reference to a public announcement to undertake the formation of something; in the second case, however, refers to the specific determination of the members of the institution itself or to the determination of the same institution. When a mechanism is established to arrive at the formation of an organization following particular methods it is better to speak of convocation instead of constitution. When it is convoked, it is done to form the council of priests, or more precisely, when elections are convoked the intention is to determine a part of the members of the council. In contrast, when the members of the council have already been designated, then one proceeds to formal "constitution" of the council. In other words, it is declared that the council of priests is constituted by certain members and thus the exercise of its functions begins.

b) Afterwards elections take place pursuant to the methods preestablished in the decree of convocation or in an electoral regulation previously established and approved. Finally, the results are published in official documents, with the names of those who were elected.

Designation by the bishop of the members reserved to him also takes place during this phase.

c) Last, the decree of formal constitution is dictated including the names of all the members that constitute the council. From this moment, the council of priests comes into existence and begins its work. A decree of appointment is not necessary for each individual council member.

Regarding the use of more appropriate terminology, it is good to follow what is commonly used in the official documents indicated as sources

in the Code itself.[6] Regarding this issue, perhaps it is worthwhile to keep in mind that with a mere word it is very difficult to express an entire reality: content, objective, and power. An expression that shows only content is considered good, that is, council of priests, council formed by priests.

2. *Description*

The canon offers a specific description of the council of priests.[7] It is a group of priests that, as the senate for the bishop and in the representation of the presbyterium, has the mission of assisting the bishop in the governance of the diocese pursuant to the law and to provide the utmost effort for the pastoral good of the portion of the people of God that has been entrusted to him (cf. Instr. *EdM*, art. 5 § 1).

The Code does not qualify the council of priests as a "college," but it considers it a "coetus," in contrast to what is stated about the college of consultors or the chapter of canons. Nevertheless, it is not proper to think that a substantial reason exists for this terminological diversity. In effect, what difference is there between the college of consultors and the council of priests? All the members of the college of consultors are appointed by the bishop, though the members belong to an already predetermined "coetus," and this does not cease when the see becomes vacant. But this is also true in the case of the finance committee of the diocese, which nevertheless is not called a college.

As normally happens in every college, its members have the same position of equality regarding convocation, activities, and the issuing of opin-

6. G. CARRETTO, "Consiglio 'Presbiteriale' o 'Presbiterale'?," in *Palestra del Clero* 46 (1970), pp. 1096–1102; L. CARLI, "Noterelle sul Consiglio Presbiterale," in *Palestra del Clero* 49 (1970), pp. 838–847.

7. For a basic bibliography, cf. the following works: J.I. ARRIETA, "El régimen jurídico de los Consejos presbiteral y pastoral," in *Ius Canonicum* 21 (1981), pp. 567–605; idem, "La configuración jurídica del Colegio de Consultores," in *Ius Canonicum* 24 (1984), pp. 783–793; G. CARZANIGA, "Il consiglio presbiterale diocesano," in *Orientamenti Pastorali* 31 (1983), no. 12, pp. 76–79; A. CATTANEO, *Il Presbiterio della Chiesa particolare* (Milan 1993); F. DANEELS, "De dioecesanis corresponsabilitatis organis," in *Periodica* 74 (1985), pp. 301–324; J. GARCÍA MARTÍN, "El Consejo de misión en las circunscripciones eclesiásticas de misión aún no erigidas en diócesis," in *Commentarium pro Religiosis* 66 (1985), pp. 307–324; F. GIANNINI, "La Chiesa particolare e gli organismi di partecipazione," in *Il nuovo codice di diritto canonico. Novità, motivazione e significato* (Rome 1983), pp. 178–191; G. GIULIANI, "Il consiglio presbiterale e il consiglio pastorale del nuovo codex," in *Giustizia e servizio* (Naples 1984), pp. 159–171; G. INCITTI, *Il Consiglio presbiterale*, P.U. Lateranense 1994 (doctoral thesis with a good bibliography); M. MARCHESI, *Consiglio presbiterale diocesano* (Brescia 1972); L. MARTÍNEZ SISTACH, "El Colegio de Consultores en el nuevo Código," in *Revista Española de Derecho Canónico* 39 (1983), pp. 291–305; *I consigli presbiterali e pastorali in Italia* (Naples 1979); G. SARZI SARTORI, "Presbiterio e Consiglio presbiterale nelle fonti conciliari della disciplina canonica," in *Quaderni di diritto ecclesiale* 8 (1995) 1, pp. 6–47; M. RIVELLA, "Le funzioni del Consiglio presbiterale," in ibid., pp. 48–60.

ions. Moreover, when it is necessary to adopt decisions that can only be done collegially, for example, the opinion of the council regarding the establishment of a parish, what has been adopted by the council lawfully is convened pursuant to law.

All the members must belong to the diocesan presbyterium, that is, they must all be priests; therefore, the deacons are excluded.

The canon qualifies the "council" as the "senate" of the bishop. This denomination has been much criticized for various reasons; early on it had been eliminated, but afterwards it reappeared and entered into the Code.[8]

The diocesan presbyterium is the matrix for the existence and activities of the council, since it is the representative organ. Also this last expression was introduced into the norm with some difficulty. It was considered dangerous since it could be interpreted as a reference to confrontational positions between the priests and the diocesan bishop. Undoubtedly, the application of the representational aspect of the council of priests requires some clarification.

Juridical doctrine recognizes four fundamental kinds of representation: voluntary, legal, organizational, and political. In our case, the first three are not applicable, since they are related to a physical person, to a juridical person, and to an organization that represents an administrative entity. Therefore, only political representation remains, which could be defined as the representation of those who possess a right to exercise a power by virtue of a mandate obtained by the election of the subject who is the basis of that power. In civil society political representation is delegated, in the sense that those who receive governing power do not truly and properly have it by themselves. The pure and simple exercise of a power that is native to and complete in the other subject, the people, is entrusted to them. For some, that representation would not create any juridical link between the represented and the representative; for others, however, it would have a certain juridical importance.[9]

Keeping in mind the theological fact of the Church, we must affirm that it is not possible to apply to it directly the concept of political representation as it has been conceived of and applied in natural society. There is, certainly, a substantial difference in the basic principle: the subject with full sovereignty in the Church is not the people, but Jesus Christ himself; moreover, the procedure to transmit the powers is not election by members of the community.

Nevertheless, although the departure point is different, the procedure for transmission can also be accepted and applied in the Church through the content of political representation. It is understood as a quality or characteristic of those who are invested of certain functions or

8. Cf. *Comm.* 13 (1981), pp. 128–29 and 14 (1982), p. 215.
9. Cf. M. MARCHESI, *Consiglio Presbiterale Diocesano*, cit., pp. 248–264.

powers, by virtue of the mandate of a subject to whom correspond those functions or powers in a natural manner.

What does this mean regarding the council of priests?

All priests, considered as a group and individually, are constituted as "the indispensable helpers and advisers [of the bishops]" (*PO* 7).[10] It is the entire presbyterium of the diocese that possess the native investiture of assisting the bishop by virtue of sacred orders received by each one of the priests. Therefore, it is not the latter or the former institutional forms of the effective exercise of a mandate, flowing from and endowed with efficaciousness in a certain historical context, which can be called "political representation" in the Church. Since such form, having sprung from history and having been established by the positive law, refers directly to the institutional and organizational aspect, and not to the subject of sovereignty. Since the council of priests is a historical form, it is not possible to apply to it directly the concept of political representation; the "political" representatives of Jesus Christ that have the function of cooperating with the bishops are all the priests, collectively and individually considered.

After all these clarifications, likewise the application could be accepted of the "political representation" to the council of priests in its relation to the presbyterium, but only in an analogous sense. Sacred orders and the canonical mission make the priests the necessary collaborators of the bishops, and constitute the basis for a certain power of participation, in a certain way and under the authority of the bishop. In the life of all the dioceses or, more specifically, in the governance of the diocese, every priest radically has this power of governance and can exercise it effectively each time the universal law of the Church, or a particular disposition of the bishop offers him that possibility. Nothing hinders, and circumstances can even advise, that the person holding this power grant it to another, so that he becomes his "political representative." In this case, we could say that a transmission of the exercise of power is given: the priests, in a manner established by the Church, grant to others a certain specific use of that faculty from each one to guarantee its efficacy or, at least, because there is no other specific possibility for its exercise.

The content of "political representation" of the council of priests can be explained by following distinct lines.

In the first example, the council *can have effective exercise* of the powers of priests as representative of Jesus Christ; powers that, we repeat, are possessed sacramentally. "Can" is used because the council presents this characteristic only when it is invested of effective powers by the universal law or, in certain contexts, by particular law. In this case, the council could be considered an "indirect political representation": political representation, since it would come to have a specific exercise of po-

10. Cf. *CD* 28, 1; *LG* 28, 2; *PO* 1, 2, 5, 7.

litical powers; indirect, because in fact those powers are not proper to the council, as a form for their exercise, but are granted to it by its true subjects, the priests.

In the second example, the council *always possesses of itself the character* of a presbyteral representation, that is, it is always the representative of the diocesan presbyterium in the assistance rendered to the bishop for the governance of the diocese. The implications of this representation in the elective phase and in the exercising phase will be examined later on.

The direct value of the political representation of the council of priests is naturally in relation to the members that have been elected. What can be said then about the members directly appointed by the bishop and about the members by law? However, the incorporation of several members to the council is not by direct election, but by provision of law or by appointment. Nevertheless, that does not hinder these members also assuming a position of "political representation" of the presbyterium, since they have been taken from it and assigned to the exercise of the function that has its model, created sacramentally, in the priests. That is, one cannot speak of a member appointed as the representative of the bishop; the classification of the designated members, or of the members by law, is always that of representatives of the presbyterium, since they continue being priests without any other specific faculty in the council and presbyterium.

We must consider now the character as collaborator of the bishop in the governance of the dioceses.

It is here where the purpose of the council of priests resides. It must be made clear that it is not an organ to resolve problems of the clergy, nor an organ to manage the activities developed by the bishop, nor an organ to go further than the decisions already made by the bishop. In all those cases, the purpose of the council would turn out to be greatly impoverished. In the first case, it would become reduced to merely cater to the problems of a certain class of persons (the council would be the equivalent of a commission for the clergy). In the other cases, the council would even be situated above the bishop, without that hindering a reductive conception of the content of its purposes. So, in effect, it would be limited to managing or furthering the work of governance, but not contributing to it, at least in the primary phase.

The specific juridical purpose of the council of priests is that of assisting the bishop in the governance of the diocese. It helps, therefore, to specify and formulate what is necessary to govern in various circumstances. It does not require so much the analysis and study of certain problems as it does the rendering of effective aid to carry out the specific dispositions that are necessary to face those certain problems. The

function of its individuation and study is properly specific to the pastoral council.

It is evident that one cannot exclude *a priori* that the council of priests collaborates in the determination and study of all that is important to diocesan life; but its specific purpose is oriented toward governance, not only in the sense of being an organization that executes a law, but also and, especially, of being an organization that contributes directly to the bringing forth of a norm.

The specification of the act of governance in which the council can or should participate corresponds to the positive law: it will be the universal or particular law that specifies it. But, in principle, we can say that the council of priests can participate, to the extent permitted, in all that corresponds to the pastoral power of the bishop.

Reasons of advisability can also suggest that the bishop personally reserve some matters or that they be entrusted to other offices or persons; but of itself, no matter has a reason to be excluded from the opinion or deliberations of the council of priests.

By following the preceding line of discussion, it is easy to recognize the basic reasons for this statement. The priests, in effect, by virtue of holy orders, participate in the one and only priesthood and ministry of the bishops. They also participate, though in a subordinate degree, in the triple *munus* of sanctifying, teaching, and ruling. Therefore, the participation of the priests in the pastoral governance of the diocese does not have binding limits: they can participate in everything, as long as it is granted to them. That power of the priests is what passes later to the council of priests, therefore, likewise the council in itself can participate in the complete exercise of pastoral power.

Every activity of the council of priests aims toward one purpose, that of promoting the best pastoral good of the diocese. This is the apostolic, spiritual purpose of the council and is also, on the other hand, the specific purpose of every diocesan pastoral action. This means that the council always works in the spirit of fraternal union with the priests, such that better conditions are created in the diocese so that the bishop is effectively assisted in the performance of his pastoral service. Therefore, he deeply appreciates the different diocesan problems of a pastoral nature such that he promotes unity among the priests, and promotes the responsibility of all the people of God in the particular church.

496 **Consilium presbyterale habeat propria statuta ab Episcopus dioecesano approbata, attentis normis ab Episcoporum conferentia prolatis.**

The council of priests is to have its own statutes. These are to be approved by the diocesan bishop, having taken account of the norms laid down by the Bishops' Conference.

SOURCES: *ES* I, 15 §1; *PS* conclussio I b, II; *DPMB* 203

CROSS REFERENCES: c. 499

COMMENTARY

Mario Marchesi

Statutes

By incorporating what was already included in the Letter *Presbyteri sacra* (see commentary on c. 495: I, 3), the canon establishes that the council of priests should have its own statutes, drafted while having in mind the norms possibly dictated by the Bishops' Conference.[1]

There are not many Bishops' Conferences that have dictated specific norms in this regard. Still, it is hard to see what dispositions can be obligatory for all the statutes of the councils of priests apart from those that are obligatory by common law. It is sufficient to examine several of the cases in which the Bishops' Conferences have dictated norms by general decree—as, for example, in Spain, Portugal, Chile and others,[2]—to realize that the "diversity" regarding what is contained in the Code is very limited, and refers to aspects, like the members by law, that would be better left in the hands of particular dispositions.

According to what was provided in the conclusion of the circular Letter *Presbyteri sacra*, the statutes must contain: "the most important questions that have be dealt with in the councils ... the manner of proceeding, the periodicity of the meetings, cooperation with the other con-

1. P. BIANCHI, "Gli statuti del Consiglio presbiterale," in *Quaderni di diritto ecclesiale* 8 (1995) 1, pp. 72–93.
2. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al C.I.C.* (Milan 1990). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

sultative organizations, fostering the relationships of the council with all the priests of the diocese."

The diocesan councils of priests have produced in practice three classes of norms for the determination of their own nature and functions, which have been denominated statutes, regulations, and electoral dispositions. Sometimes all this is compiled in a single normative document denominated statute; at other times there exist a statute and regulations, and on other occasions there are three documents.

Statutes refer normally to the essential elements of the council: constitution, nature, purpose, power, duration, members, meetings, and relations.

Frequently, experience shows that the content of statutory norms repeat synthetically what is already found in the descriptive or normative documents that constitute the sources of the councils of priests.

For the considerations that must be kept in mind for the formulation of some good statutes, see commentaries to cc. 497–502.

The regulations spend much time dealing with the internal structure of the council and the functioning of the assemblies or meetings. In general, the assembly and preparation of the agenda are regulated; presidency, the moderators, and the secretariat of the council are described; norms for participation are established; possible commissions or study groups are constituted, and relations with the council itself are regulated; instructions regarding economic compensation are given; and the preparation, development, and conclusion of the sessions are regulated.

The specific entity of a regulation is made proportional to the facts that must be regulated. Where the council of priests has a high membership and frequent meetings, it becomes more necessary to have detailed regulations. However, when the membership is less, that need is less. For this reason, sometimes the internal regulations of the sessions of the council of priests are not made separately, but the matter is resolved by devoting one article to it in the statutes themselves.

In the electoral norms there are dispositions regarding the period between convocation and constitution of the council of priests.[3] We will limit ourselves now to several observations regarding electoral formalities. For a more thorough treatment of the subject, see the commentary on c. 499.

It is evident that the secrecy of the voting must be guaranteed. It seems to be a good idea to allow the possibility of voting by mail, with due precautions. It also seems a sound idea to use an electoral list, and to appoint polling monitors and to allow public scrutiny.

3. Cf. M. MARCHESI, *Consiglio Presbiterale Diocesano* (Brescia 1972), pp. 149–186 and 305–313.

All the electoral norms must be published seasonably and there must be provision for the resolution of possible cases of doubt. Therefore it is necessary that there exist a debated electoral regulation and opportunely approved so as to avoid the need to publish norms "in fragments," as happened one time with constantly modified dispositions that produced confusion, decreasing the seriousness required for such an important act. Otherwise, it seems natural that the complete results of the elections be made public and an opportunity be afforded for their verification.

497 Ad designationem quod attinet sodalium consilii presbyteralis:

1° dimidia circiter pars libere eligatur a sacerdotibus ipsis, ad normam canonum qui sequuntur, necnon statutorum;

2° aliqui sacerdotes, ad normam statuorum, esse debent membra nata, qui scilicet ratione officii ipsis demandati ad consilium pertineant;

3° Episcopo dioecesano integrum est aliquos libere nominare.

As far as the designation of the members of the council of priests is concerned:

1° about half are to be freely elected by the priests themselves in accordance with the canons which follow and with the statutes;

2° some priests must, in accordance with the statutes, be members ex officio, that is belong to the council by reason of the office they hold;

3° the diocesan bishop may freely appoint some others.

SOURCES: *PS* 7

CROSS REFERENCES: —

COMMENTARY

Mario Marchesi

Members

1. Ordination as a priest is the general fundamental condition for being able to be a member of the council of priests. Incardination in the diocese is required for diocesan priests. For religious priests and secular priests not incardinated in the diocese it is required that they have there the care of souls or practice works of the apostolate.

Various experiences show that there is no common criterion regarding the size of the membership of the council of priests. One can state that there is a tendency to have a higher percentage of representation in smaller dioceses. It is necessary to observe that the tendency to increase membership seems to us to be an error. An organization of governance cannot be appropriate and efficient if it has many members. It could be easily justified in an organization for study, discussion, assessment, or

problem solving, but not in an organization that must collaborate in governance. While recognizing the various experiences, it can perhaps be emphasized that the tendency to increase membership occurs where there is no pastoral council or where the council of priests is confused in practice with the pastoral council.

The prior qualification that makes a priest suitable to belong to a council of priests is, as already stated, belonging to a diocesan presbyterium.[1] This qualification is common to all the priests and is prior to any activity that moves toward the formation of a council of priests.

The "proximate" qualifications for membership can be reduced to three:

a) qualification by law;

b) qualification by episcopal appointment;

c) qualification by election (likewise valid for religious).

The members by law are specified in the particular norms, which sometimes also add the class of members by office. This last class is identified with the other since "members by law" refers to those priests whose participation in the council is already pre-determined by the norms themselves.

Qualification by "episcopal appointment" would be better expressed by that of "episcopal designations," if one wants to preserve the connotation of appointment as "missio canonica" for an ecclesiastical office.

A qualification by election corresponds to those members who are designated by virtue of a preference obtained through the expression of a vote by the diocesan priests.

When a priest is elected, does he thus become a member of the council of priests?

It can be stated that in this case he has the right of participating in the council. But for serious reasons the bishop could refuse his membership. Naturally, the reasons have to be serious because the universal or particular law has set a procedure for designations which cannot be changed in individual cases without a certain gravity; otherwise it would become arbitrary. On the other hand, remember that the efficient exercise of the office of the council of priests depends on the law. Likewise, the council of priests has need of its constitution for the effective exercise of its functions, and the designated priests are not yet members of the council, which only exists after an episcopal decree that declares it formally constituted.

The division of the members into three categories (by law, by designations, and by election) certainly does not have any risk of heterogeneity.

1. Cf. CC, *Directory for the ministry and life of priests*, January 31, 1994, no. 25.

Moreover, it is completely founded on valid reasons: with their appointments, the bishops complete the representation and plug some gaps produced by the results of the elections; the presence of a holder of several important offices contributes to a greater balance of opinions and furnishes a greater competency.

Nevertheless, several questions can be presented: if we consider that the council of priests does not have of itself the function of studying various pastoral problems, but that its function is that of governance. Is it then indispensable that the various offices be represented in it? Rather, is not the pastoral council the proper context for them? If an electoral procedure were found that permitted representation of the entire presbyterium, would the participation of the bishop be necessary for various appointments?

Undoubtedly it is very difficult to find a perfect election procedure; therefore, for other reasons, it is perhaps always advisable to reserve to the bishop the possibility of directly appointing several members.

2. Yet another word about the rights and duties of members as individuals and collectively.

From a strictly personal point of view, there seems to be only one juridical duty of a member of the council of priests: that of personally participating in the meetings each time they are called, with the consequent impossibility of being represented, and the duty to duly justify absences. The duty of maintaining secrecy must be excluded, as least as a general norm.

In general terms the council of priests has its own juridical duty of representation, with the consequent necessity of giving an account of its actions to its constituents.

To this end, on the one hand the necessity must be kept in mind of attributing to the council a certain autonomy of action to facilitate its effectiveness and speed, and on the other, the necessity of guaranteeing to the electoral body the possibility of regulating the actions of the representatives through juridical bonds established by positive law that can make possible the direct participation of all the diocesan priests.

To create those juridical bonds, these two norms can be established:

a) When the bishop considers it opportune, he could resort to consulting the entire diocesan presbyterium, thus giving more weight to the council.

b) Certain persons could present an appeal to the presbyterium; this provision would allow for persons other than the bishop to go from the council to the presbyterium (something the lack of which would imply discourtesy and, therefore, discord), and would imply a greater responsibility on behalf of the priests.

A second general juridical duty is that of observing the statutes and regulations with the consequent obligation of not infringing on the individual competences.

Regarding the rights of each one of the members, it can be summed up this way: the right of participation in the sessions; the right to present proposals regarding matters to be placed on the agenda; the right to present written questions; the right to economic compensation for expenses and work done.

Considered as a whole, the council of priests has these rights: the right to be convened pursuant to the statutes and established methods; the right to be heard and to express its own opinion on all the subjects within its competency, determined by universal or particular law; the right to perform its functions during the entire time established by universal or particular law.

Regarding a member's ceasing in his office, such can occur for several reasons: non-acceptance of the office; leaving office; change of office (in the case of those who are members because of their office); expiration of the mandate; and for other reasons provided for by law.[2]

2. Cf. M. MARCHESI, *Consiglio Presbiterale Diocesano* (Brescia 1972), pp. 95–148 and 286–304.

498 **§ 1. Ius electionis tum activum tum passivum ad consilium presbyterale constituendum habent:**
1° omnes sacerdotes saeculares in dioecesi incardinati;
2° sacerdotes saeculares in dioecesi non incardinati, necnon sacerdotes sodales alicuius instituti religiosi aut societatis vitae apostolicae, qui in dioecesi commorantes, in eiusdem bonum aliquod officium exercent.

§ 2. Quatenus statuta id provideant, idem ius electionis conferri potest aliis sacerdotibus, qui domicilium aut quasi-domicilium in dioecesi habent.

§ 1. The following have the right to both an active and a passive voice in an election to the council of priests:
1° all secular priests incardinated in the diocese;
2° priests who are living in the diocese and exercise any office for the benefit of the diocese, whether they be secular priests not incardinated in the diocese, or priest members of religious institutes or of societies of apostolic life.

§ 2. In so far as the statutes so provide, the same right of election may be given to other priests who have a domicile or quasi-domicile in the diocese.

SOURCES: § 1: *ES* I, 15 § 2; *PS* 6; *MR* 56
§ 2: *ES* I, 15 § 2; *PS* 6

CROSS REFERENCES: —

COMMENTARY

Mario Marchesi

Active and passive right of election

The concept of diocesan presbyterium that can be deduced from the canon has a practical character suggested by the specific purpose attributed to the council of priests. Keeping in mind what the composition of the council of priests is and whom it represents, it can be stated that the principle to determine if a priest is or is not a member of a diocesan presbyterium is that of his bond of unity (hierarchical communion) with the diocesan bishop; therefore, for the *CIC*, the diocesan presbyterium is

constituted by whole of the priests in the diocese that are in relation with the bishop in the terms stated by nos. 1° and 2° of § 1 of this canon.[1] Number 26 of the *Directory for the ministry and life of priests* issued in 1994, states for its part: "secular priests not incardinated in the Dioceses and the priest members of a religious Institute or of a Society of apostolic life, *who live in the Diocese and hold, for its welfare, an office, though subject* to the lawful Ordinaries, belong with full or with limited rights to the presbyterium of that Diocese where 'they have voice, both active and passive, to constitute a council of priests.'"[2]

The canon establishes the right of election, both active and passive: for the secular priests, incardinated in the diocese; for the priests not incardinated, and for the religious priests who hold an office in the diocese. Finally, the same right can also be granted to other priests who have a domicile or quasi-domicile in the dioceses.[3]

The formulation of this canon makes one think that the determining element for a priest to have active and passive vote in the elections is that he has a specific task for the welfare of the diocese. The other elements, residence, domicile, quasi-domicile, incardination, consecrated life, are complementary or specifying. In the last phase of revision of this provision the expression "qui in dioecesi officium aliquod ab Episcopo dioecesano collatum exercent," that the preceding *Schemata* contained at the end of no. 2° of § 1, was substituted for by what now appears: "in eiusdem bonum aliquod officium exercent."[4]

The literal formulation of the canon leads to the thought that, for a priest incardinated in the diocese to lose the right of active and passive election, it is necessary for there to exist a decree from the diocesan bishop that declares that loss for a just cause; for instance his refusal to assume the exercise of a ministry at the service of the diocese.

A special case is that of the secular priests incardinated but not suited to hold an office: for those the principle could apply that they are always in a state of service since the incapacity to hold an ecclesiastical office is extrinsic to their will.

An objection could be made to this proposition. For not having real responsibilities, the unsuitable priests could be excluded from the possibility of being members of a council of priests. In effect, if they are considered or declared unsuitable for the most diverse reasons to carry out other

1. Cf. A. CATTANEO, *Il Presbiterio della Chiesa particolare* (Milan 1993), pp. 72–104; 130–134 and 160–164.
2. CC, *Directory for the ministry and life of priests*, January 31, 1994, no. 26.
3. Cf. M. MARCHESI, "Il Consiglio presbiterale: gruppo di sacerdoti, rappresentante di un presbiterio," in *Quaderni di diritto ecclesiale* 8 (1995) 1, pp. 61–71; C. REDAELLI, "Il diritto di voce attiva e passiva nell'elezione del Consiglio presbiterale. Il caso dei presbiteri appartenenti alla prelatura personale Opus Dei," in ibid., pp. 94–102.
4. Cf. *Comm.* 13 (1981), p. 130 and 14 (1982), p. 216.

offices, there are no valid reasons for them to hold the office of council member in an organization that is certainly the most important for pastoral work in the diocese.

The objection is more apparent than real. Nothing hinders a priest, physically unsuited but spiritually and intellectually capable, and, therefore, having full capacity to give advice on governance. Moreover, do not forget that there is an electoral body that must assess and judge on its own responsibility, by means of elections, if a priest is or is not suited to be a member of a council of priests.

It is completely evident that the case of the unsuited priests is essentially different from those who willfully do not assume a ministerial service in the diocese.

499 **Modus eligendi membra consilii presbyteralis statutis determinandus est, ita quidem ut, quatenus id fieri possit, sacerdotes presbyterii repraesententur, ratione habita maxime diversorum ministeriorum variarumque dioecesis regionum.**

The manner of electing the members of the council of priests is to be determined by the statutes, and in such a way that as far as possible the priests of the presbyterium are represented, with special regard to the diversity of ministries and to the various regions of the diocese.

SOURCES: *ES* I, 15 § 2; *PS* 6, 7; *DPMB* 203

CROSS REFERENCES: —

COMMENTARY

Mario Marchesi

The election procedure

The procedure that must be utilized to determine the membership merits special consideration. Is it valid and worthwhile to have a distinction between members by law, by appointment, and by election? What electoral procedure more guarantees a valid and representative election? What formalities must be followed in elections? What practice must be followed in the designation of religious?

As can be seen, these issues possess a considerable practical importance.

With respect to the procedure used in elections, there are several reservations regarding the form, used at one time, that takes as a point of departure the division of the clergy into classes, being parish priests, assistant vicars, and others. The reason is that this system has an unnecessary subdivision of the presbyterium, which could foster divisions of classes and interests. In any case, certain attention must be paid to the classes and to the zones, since in practice general elections have gaps, especially regarding representation.

What criterion should be used then to determine the numerical representation of each individual class? What criterion to follow to determine the vicarial or zonal electoral colleges?

The circular letter *Presbyteri sacra,*[1] regarding the members of the councils of priests distinguishes parish priests, assistants, chaplains, etc. In other specifications a triple distinction is present between parish priests, assistants, and other priests (not parish priests, nor assistant vicars). This could be a good start. However, it does not seem necessary to fix as classes in themselves the seminary professors, canons, personnel of the curia, and religion teachers. Another acceptable division could consider two classes: priests with direct care of souls and priests undertaking other activities of the apostolate.

Regarding the numerical determination for each individual class, it seems preferable as a general electoral procedure, that is, that all the priests participate in the election of all the members of the council of priests.

In the determination of the various zonal or vicarial electoral colleges it must be assured that all the zones are represented.

We will not go into greater detail regarding this point because in each diocese it is considered in relation to the specific situation. It would only have to be emphasized that a class and zonal division has certain risks. An excessive preoccupation in representing ministries and zones could easily lead to exclusion from the council members, who are perhaps more competent than others. It is not far-fetched that in a certain zone, where perhaps only one representative can be elected, there exist others that have the confidence of a good part of the priests and are truly competent people. Some have tried to obviate this danger with a mixed system of zonal colleges and a single diocesan college. This could be, without a doubt, a good and effective system.

It is also fitting to observe, regarding the electoral criterion, that the method of dual elections—the first being selective and the second definitive—that has been preferred by various dioceses, has unquestionable advantages. It is necessary, nevertheless, to avoid falling into the danger that has occurred in the elections of a certain council of priests. In the primary elections, the priests, divided into colleges or regions or electoral zones, have elected two candidates from the same electoral college. In the secondary elections, each elector of the entire diocese has elected a priest for the electoral college from a list of candidates formed by the first two elected in the primaries of each college. The procedure included a risk that really occurred. It happened that a priest who had received the vote of his college in the primary elections, was not later elected in the secondary elections, while in the general election a priest won who had come in second place in his own college. Thus, there was priest as a zonal representative on the council who had not won a majority in that same zone.

1. *AAS* 62 (1970), pp. 459–465.

The various utilized electoral criteria have not been able to avoid several defects of representation, it having been generally stated that not all the priests have been represented in the heart of the council. Certainly it is not easy to obviate this defect.

Regarding the designation of religious, the procedure is preferable no doubt that puts them at the same level of the diocesan priests, even considering that in practice it is necessary to utilize a particular technique, for their being less well known in general than the rest of the diocesan priests.

500 **§ 1. Episcopi dioecesani est consilium presbyterale convocare, eidem praesidere atque quaestiones in eodem tractandas determinare auta membris propositas recipere.**

§ 2. Consilium presbyterale gaudet voto tantum consultivo; Episcopus dioecesanus illud audiat in negotiis maioris momenti, eius autem consensu eget solummodo in casibus iure expresse definitis.

§ 3. Consilium presbyterale numquam agere valet sine Episcopo dioecesano, ad quem solum etiam cura spectat ea divulgandi quae ad normam § 2 statuta sunt.

§ 1. It is the prerogative of the diocesan bishop to convene the council of priests, to preside over it, and to determine the matters to be discussed in it or to accept items proposed by the members.

§ 2. The council of priests has only a consultative vote. The diocesan bishop is to consult it in matters of more serious moment, but he requires its consent only in the cases expressly defined in the law.

§ 3. The council of priests can never act without the diocesan bishop. He alone can make public those things which have been decided in accordance with § 2.

SOURCES: § 1: *PS* 8
§ 2: *PO* 7; *ES* I, 15 §§ 1 et 3; *PS* 9
§ 3: *PS* 9

CROSS REFERENCES: cc. 443, 461, 463, 495, 500, 515, 531, 536, 1215, 1222, 1263, 1742

COMMENTARY

Mario Marchesi

Paragraph 2 of the canon ratifies the exclusively consultative nature of the council of priests. It states the principle according to which the law can determine specific cases in which its consent is expressly required, at the same time leaving open its deliberations to have possibly a binding force.

This "law" to which the canon refers, is it the universal law or also particular law? The question of the possibility of attributing a deliberative

vote to the council was a rather heated debate in the elaboration phase of the canon, for the circular letter *Presbyteri Sacra*[1] provided in its no. 9 for the possibility of a deliberative vote in certain subjects or circumstances. "The council of priests is a consultative organ of an individual nature. It is called consultative because it does not have a deliberative vote; therefore it cannot approve decisions that obligate the bishop, unless the universal law of the Church has provided otherwise or that the bishop, in individual cases, has considered it advisable to attribute a deliberative vote to the council."[2] But the canon speaks of *iure* and not of *iure universali*; therefore, the faculty of the bishop must be considered confirmed in that he is to be bound to the consent of the council in certain subjects or in specific cases. On the other hand, the Code itself recognizes immediately a certain deliberative function, though of a negative nature, at least for two diocesan organizations: the diocesan finance committee and the college of consultors, whose opinion sometimes has a negative deliberative character; that is, not being binding for the realization of certain acts of the legal representative, but possibly binding for its not being carried out.[3]

Before examining several conclusive observations about this aspect (for a consideration of its foundation, see commentary on c. 495), it seems advisable to have in mind that an action of governance generally does not spring from nothing, but usually has a particular history. It flows from and is realized in a specific situation, and tries to give a response to one or more individual problems. And these problems arise in a situation caused by certain needs or cultural conceptions, whose origin and development are due to various people. Now then, we think that it can be said without doubt that situations and persons contribute always in a certain manner to the actions of governance, though those situations and persons might not be the direct source of decision of governance.

It is taking part in governance, not only when it is intended to take a deliberative vote regarding one or another problem but also when mere consultation is called for, when certain problems arise and possible solutions are favored. It is true that the levels of participation of one who votes deliberatively and that of one who gives qualified advice, that of one who give simple advice, and that of one who creates situations and offers solutions are different. But it is also true that all these methods are forms of participating in governance, each in its own way. Moreover, there can easily be a deliberative vote or a disposition dictated by the authority that is a mere conclusion, we could say necessary, of specific needs in real life, and not of created situations for him who votes or has authority. In this case, it can very well be stated that he who has created the situations,

1. *AAS* 62 (1970), pp. 459–465.
2. Cf. *Comm.*, 13 (1981), 131–133; 14 (1982), 217; 25 (1993), 122–132.
3. Cf. M. MARCHESI, "Il laico e l'amministrazione dei beni nella Chiesa," in *Quaderni di diritto ecclesiale* II (1989), p. 335.

studied them, and favored possible solutions has participated more in the work of governance than he who merely has ratified them with his juridical recognition and authoritative decision.

Synthetically we can summarize in three specific sections the power of the council.

a) Before all in relation to its three points of reference.

In relation to the bishop the power is in itself consultative. As has already been emphasized, "it is of itself consultative," since nothing impedes its being in certain cases recognized by the universal or particular law as also deliberative.

In relation to the offices of the diocesan curia, together with the bishop it is of a dispositive nature. The presbyteral council is a principal structure of the diocese, intervening in its governance, and, for that reason, disposing, together with the bishop, what the other organizations have to execute.

In relation to the diocesan presbyterium the power of the council of priests is not exclusive since it is not all the presbyterium but only its representative; for which, it is always possible and even advisable that the bishop resort to all the priests in those matters and with those procedures that might be established.

b) Regarding the council's power, the circular letter regarding councils of priests *Presbyteri sacra* emphasizes that "in general it is the mission of the council to suggest the norms that possibly have to be dictated and to propose matters of principle; but not to deal with questions that by their nature require discretion in the manner of proceeding, as occurs in the designation of offices." (n. 8).

c) By positive law the council's power is the following:

— the members of the council have the right to have two of their members participate in the provincial council (c. 443 § 5);

— it must be heard for the convoking of the diocesan synod (c. 461 § 1);

— the members of the council of priests have the right to be summoned to diocesan synod (c. 463 § 1, 4°);

— it must be heard in matters of greater importance (c. 500§ 2);

— it must be heard to erect, suppress, and substantially modify the parishes (c. 515) § 2);

— it must be heard to establish the norms regarding the use of the offerings of the faithful referred to in c. 531;

— it must be heard to make obligatory the constitution of parish pastoral councils (c. 536 § 1);

— it must be heard for the establishment of new churches (c. 1215 § 2);

— it must be heard for the reduction of a church to profane uses (c. 1222 § 2);

— it must be heard for the levying of an ordinary tax on juridical persons subject to the diocesan bishop and for the levying of an extraordinary tax on other physical and juridical persons (c. 1263).

— it must establish, upon proposal of the bishop, the group of parish priests, from which two are chosen who, together with the bishop, will decide cases of removal of parish priests (c. 1742).[4]

4. Cf. L. CHIAPPETTA, *Il Codice di diritto canonico* (Naples 1988), pp. 582–592.

501 **§ 1. Membra consilii presbyteralis designentur ad tempus, in statutis determinatum, ita tamen ut integrum consilium vel aliqua eius pars intra quinquennium renovetur.**

§ 2. Vacante sede, consilium presbyterale cessat eiusque munera implentura collegio consultorum; intra annum a capta possessione Episcopus debet consilium presbyterale noviter constituere.

§ 3. Si consilium presbyterale munus sibi in bonum dioecesis commissum non adimpleat aut eodem graviter abutatur, Episcopus dioecesanus facta consultatione cum Metropolita, aut si de ipsa sede metropolitana agatur cum Episcopo suffraganeo promotione antiquiore, illud dissolvere potest, sed intra annum debet noviter constituere.

§ 1. The members of the council of priests are to be designated for a period specified in the statutes, subject however to the condition that over a five year period the council is renewed in whole or in part.

§ 2. When the see is vacant, the council of priests lapses and its functions are fulfilled by the college of consultors. The bishop must reconstitute the council of priests within a year of taking possession.

§ 3. If the council of priests does not fulfil the office entrusted to it for the welfare of the diocese, or if it gravely abuses that office, it can be dissolved by the diocesan bishop, after consultation with the Metropolitan; in the case of a metropolitan see, the bishop must first consult with the suffragan bishop who is senior by promotion. Within a year, however, the diocesan bishop must reconstitute the council.

SOURCES: § 2: *ES* I, 15 § 4; *PS* 10

CROSS REFERENCES: —

COMMENTARY

Mario Marchesi

Length of time in office

Length of time in office in an organization has its importance in relation to its vitality and effectiveness. A mandate that is too short does not

guarantee the members the possibility of a practical knowledge of their work; a mandate that is too long has the danger that after the initial launch it slows down or stagnates.

The duration of the council of priests had been fixed in practice to three years. Canon 501 § 1 provided a renewal (total or partial) at least every five years: "The members of the council of priests are to be designated for a period specified in the statutes, subject however to the condition that over a five year period the council is renewed in whole or in part."

Besides the running of the time determined in the statutes, the council of priests ceases to exist when the see is vacant, or when the council is dissolved by the bishop as provided by law.

The mp *Ecclesiae Sanctae* had established that the council of priests would cease to exist if the see was vacant (I, 15 § 4). This norm was confirmed by the *CIC* (c. 501 § 2), with one innovation: its functions pass to the college of consultors; the new bishop must constitute another council of priests within one year from the moment he takes possession of his office.

The diocesan bishop can dissolve the council of priests if it does not carry out the functions entrusted to it for the good of the diocese or if it seriously abuses them. Nevertheless, to avoid abuses, the Code obliges the bishop first to consult with the Metropolitan or, if the matter involves the same Metropolitan see, with the most senior suffragan bishop. The council has to be reconstituted within a year (c. 501 § 3).[1]

1. Cf. *Comm.* 14 (1982), p. 217.

502 **§ 1. Inter membra consilii presbyteralis ab Episcopo dioecesano libere nominantur aliqui sacerdotes, numero non minore quam sex nec maiore quam duodecim, qui collegium consultorum ad quinquennium constituant, cui competunt munera iure determinata; expleto tamen quinquennio munera sua propria exercere pergit usquedum novum collegium constituatur.**

§ 2. Collegio consultorum praeest Episcopus dioecesanus; sede autem impedita aut vacante, is qui ad interim Episcopi locum tenet aut, si constitutus nondum fuerit, sacerdos ordinatione antiquior in collegio consultorum.

§ 3. Episcoporum conferentia statuere potest ut munera collegii consultorum capitulo cathedrali committantur.

§ 4. In vicariatu et praefectura apostolica munera collegii consultorum competunt consilio missionis, de quo in can. 495 § 2, nisi aliud iure statuatur.

§ 1. From among the members of the council of priests, the diocesan bishop freely appoints not fewer than six and not more than twelve priests, who are for five years to constitute the college of consultors. To it belong the functions determined by law; on the expiry of the five year period, however, it continues to exercise its functions until the new college is constituted.

§ 2. The diocesan bishop presides over the college of consultors. If, however, the see is impeded or vacant, that person presides who in the interim takes the bishop's place or, if he has not yet been appointed, then the priest in the college of consultors who is senior by ordination.

§ 3. The Bishops' Conference can determine that the functions of the college of consultors be entrusted to the cathedral chapter.

§ 4. Unless the law provides otherwise, in a vicariate or prefecture apostolic the functions of the college of consultors belong to the council of the mission mentioned in can. 495 § 2.

SOURCES: § 1: cc. 385 § 2, 424, 425 § 1, 426 § 1; *CD* 27
§ 2: *DPMB* 205
§ 3: cc. 423, 427
§ 4: c. 302

CROSS REFERENCES: cc. 272, 377 § 3, 382 § 3, 404 §§ 1 et 3, 413, 419, 421 § 1, 422, 430, 485, 494, 833, 4°, 1018 § 1, 2°, 1277, 1292 § 1, 1295

COMMENTARY

Mario Marchesi

The college of consultors

1. The college of priest consultors can be considered an innovation of the Code, which prescribes it as an emanation of the council of priests. Nevertheless, it is important to keep in mind that in cc. 423–428 of *CIC*/1917 an analogous organization was provided to those dioceses in which it was not possible to constitute a cathedral chapter.

The Commission for reform of the *CIC* was concerned about the constitution of this organization because of the difficulty of convoking the council of priests in all cases, especially in the most urgent matters: a smaller group of persons allows for an easier consultation. In the Plenary Session, various issues regarding this organization were developed; a member counseled against its creation considering it a duplication of the council of priests. Another proposed that its members not be elected from among the council of priests, so as to more clearly distinguish the two organizations. On the suggestion of a third member, the last part of c. 502 § 1 was added, which provided for the extension of the functions of the college past five years until another council was constituted.[1]

The college of consultors is a permanent college of priests, freely chosen by the bishop from among the members of the council of priests, in a number not less than six and not greater than twelve. Its purpose is to assist the bishop in cases established by law and of appointing an administrator of the diocese during an impeded or vacant see. The prescribed duration is five years. The Bishops' Conferences can establish that the matters entrusted to this college can continue to be fulfilled by the cathedral chapter.

Paragraph 3 assigns to the Conference the faculty of deciding that the functions the Code has entrusted to the college of consultors be attributed possibly to the cathedral chapter.

Evidently, if the Bishops' Conferences were to make a decision in this sense, it would not constitute the college of consultors; therefore, in

1. Cf. *Comm.* 5 (1973), p. 230; 14 (1982), pp. 217–218.

ecclesiastical organization there can be two forms of college, profoundly different regarding the procedure of formation, which nevertheless would assume the same work.

It doesn't seem that the canoncial norm allows for a division of the functions attributed to the college of consultors between the college and the cathedral chapter. In effect, the Code uses a general expression that implies a strict choice between one or the other organization.

Paragraph 4 provides a special structure for the vicariate and prefecture apostolic.

To the extent that the law does not offer preceptive dispositions, both the methods of designation and the form in which the college performs its collaboration are left to the discretion of the bishop. Regarding this last point, it seems convenient to have it determined in a regulation. Therefore leaving it to the diplomacy (or whim) of a person or of the moment's situation will be avoided.

In case a member of the college of consultors stops being a member of the council of priests during the time of its mandate he remains nonetheless, in his office of consultor. In case a consultor ceases from office during the five year term, the diocesan bishop is not obliged to appoint another in his place, except when that would result in fewer than the minimum members required by the canon.[2]

2. The specific function of the college of consultors provided for by the Code are the following:

— the diocesan administrator needs the consent of this organization to be able to proceed (after the see has been vacant a year) to incardination and excardination, and to grant permission for transfer to another diocese (c. 272);

— in the special case of c. 377 § 3 it can be consulted "quosdam e collegio consultorum" for the appointment of the diocesan bishop or the coadjutor bishop;

— it receives apostolic letters upon the diocesan bishop taking possession of his office, and likewise in the case of the coadjutor bishop when the diocesan bishop is impeded (c. 382 § 3 and 404 §§ 1 and 3);

— when the see is impeded, and when that which is prescribed in § 1 of c. 413 is not possible, it is their responsibility to elect a priest who will govern the diocese (c. 413 § 2).

— when the see is vacant and if there are no auxiliary bishops, and if the Holy See has not provided otherwise, it assumes the governance of the diocese (c. 419) and it must choose a diocesan Administrator within eight days from the notice of the vacancy of the see (c. 421 § 1);

2. Cf. *Comm.* 15 (1984), pp. 240–241.

— it informs the Holy See of the death of the diocesan bishop when there is no auxiliary bishop (c. 422);

— it receives the possible renunciation from office of the diocesan administrator. In this case (and in the case of the death of the administrator) it must select another, pursuant to c. 421 (cf. also c. 430);

— the diocesan administrator (not the bishop) must obtain its consent for the removal of the chancellor and the notaries of the curia (c. 485);

— it must be heard for the appointment of the diocesan financial officer (c. 494 § 1) and for his removal (ibid. § 2);

— it receives the profession of faith of the diocesan administrator (c. 833,4°);

— the diocesan administrator must obtain its consent to issue dimissorial letters to secular clerics who must receive holy orders (c. 1018 § 1,2°);

— it must be heard by the bishop for financial administrative acts of a certain value. The bishop has to obtain its consent for extraordinary administrative acts, besides those specially indicated by the universal law or the founding statutes (c. 1277);

— the diocesan bishop must obtain its consent to alienate goods (whose value is between the minimum and maximum amounts as established by the Bishops' Conference) of juridical persons not subject to their own ordinary, when the statutes do not indicate a competent authority. Its consent is also required for the alienation of the goods of the diocese (c. 1292 § 1; cf. c. 1295).

CAPUT IV
De canonicorum capitulis

CHAPTER IV
Chapters of Canons

503 **Capitulum canonicorum, sive cathedrale sive collegiale, est sacerdotum collegium, cuius est functiones liturgicas sollemniores in ecclesia cathedrali aut collegiali persolvere; capituli cathedralis praeterea est munera adimplere, quae iure aut ab Episcopo dioecesano ei committuntur.**

A chapter of canons, whether cathedral or collegiate, is a college of priests, whose role is to celebrate the more solemn liturgical functions in the cathedral or the collegiate church. It is for the cathedral chapter, besides, to fulfil those roles entrusted to it by law or by the diocesan bishop.

SOURCES: c. 391 § 1; SCB-SCCong Let., 19 iul. 1972; *DPMB* 205

CROSS REFERENCES: cc. 113 § 2, 114–116, 834, 836, 840, 443 § 5, 463 § 1, 3°, 502 § 3

COMMENTARY

Fernando Loza

1. *The institution of the chapter.* The chapter of the Code that begins with this canon establishes in eight canons the *new configuration* of the cathedral chapters, pursuant to the provisions of Vatican Council II (*CD* 27 and *PO* 7).

The Code profoundly reforms the nature and competencies of the cathedral chapter that the *CIC*/1917 had. The abandoning of the beneficial system (*PO* 20 and c. 1272); the creation of the council of priests as the "senate of the bishop" (c. 495 § 1) and of the college of consultors substan-

tially affected the institution, which has been configured, almost *ex novo*, by the present codification.

Far from useless nostalgia and yearnings for the past—however justified—the new legal reality must be followed to revitalize the chapters, pursuant to the prescriptions and possibilities that the legislator sanctions.

Pursuant to *Pastor Bonus* 97 the questions relative to the chapter of canons, which are the competence of the Apostolic See, fall under the competence of the Congregation for the Clergy.

2. The present canon distinguishes two kinds of chapters: the *cathedral chapter*, which has its see in a cathedral or co-cathedral church; and the *collegial chapter*, in a collegiate church.

3. The *nature* of the chapter is defined thus: "it is a college of priests." Therefore, it is a juridical person, collegial and public (cf. cc. 113 § 2; 114–116). Because it says "of priests," deacons cannot belong to the chapter; but those that have an episcopal character, e.g., the auxiliary bishop, can.[1]

4. The canon determines with precision that its own specific purpose is "to celebrate the most solemn liturgical functions." This is its reason for being, its permanent and necessary mission. Thus, the chapters are primarily bound to liturgical worship; namely, to the sanctifying function of the Church "in the sacred liturgy, which is indeed seen as an exercise of the priestly office of Jesus Christ" (c. 834). This is its extremely noble mission: to give to God the most solemn public worship, with the greatest liturgical dignity and perfection.

Such function and purpose, which the chapters have had secularly in history, remains and is reinforced by the current law in the life of the Church. The chapters are intended to be a model liturgical institution. The strict fulfillment of its functions of worship can and should convert them into a genuine paradigm of liturgical life and pastoral conduct both in theory and practice for the entire diocesan church.

5. *Divine worship* is not only the Eucharistic Sacrifice; it also encompasses the administration of the sacraments (c. 840), and is necessarily bound to the "ministry of the word" (c. 836) "by which faith is born and nourished" (ibid.). Hence, the function of worship of the chapters includes the preaching of the divine word, within and outside of the liturgy, and the careful preparation and administration of the sacraments in the cathedral or collegial church.

6. The canon adds other possible competencies of the chapter: "to perform those offices that the law or the diocesan bishop entrusts to them";

1. Cf. *Comm.* 14 (1982), p. 215.

a) *A iure*, the cathedral chapters must be summoned to the provincial council (c. 443 § 5); to the diocesan synod "[they] are to be summoned to the diocesan synod as members and they are obliged to participate in it ... the canons of the cathedral church" (c. 463 § 1, 3°); another possibility is that the functions of the college of consultors be entrusted by the Bishops' Conference to the cathedral chapter (c. 502 § 3).

b) Regarding the offices that the diocesan bishop can entrust to the chapter, there are various and abundant possibilities, according to the circumstances and needs of the diocese. Because it is the express will of the legislator that the canons be a college of priests qualified by their doctrine, integrity of life, and meritorious ministerial experience (c. 509), it seems clear that in them the bishop has candidates suitable for the functions of diocesan governance, teaching functions in the seminary, liturgical pastoral activity, etc.

504 **Capituli cathedralis erectio, innovatio aut suppressio Sedi Apostolicae reservantur.**

The establishment, alteration or suppression of a cathedral chapter is reserved to the Apostolic See.

SOURCES: c. 392

CROSS REFERENCES: c. 361, 503

COMMENTARY

Fernando Loza

1. The canonical tradition (*CIC*/1917, c. 392) is preserved with respect to the only competent authority to establish, suppress, or alter the fundamental structure of a cathedral chapter: only the Apostolic See can do so; it is the competence of the Congregation for the Clergy (cf. *PB* 97). The collegial chapter, however, is no longer subject to this reservation.

2. The lack of vitality that some chapters have been suffering is not, of itself, a sufficient reason to ask for them to be suppressed. When possible, a better solution seems to be to revitalize them according to the current canonical norms.

What is precisely reserved to the Apostolic See is strictly their establishment, suppression, and alteration, which indicates that, according to the intent of the legislator, the chapters continue to have a reason for being and have importance in the divine worship of the Church.

3. It should not be forgotten that the canonical institution has for centuries maintained the dignity and splendor of divine worship in cathedral and collegial chapters. Remember, for example, their sponsorship and contribution to the historical-cultural patrimony, sacred music, and sacred art in general (liturgical ornaments, sacred vessels, altarpieces, sculptures, paintings, etc.), of the highest artistic value and profound religious meaning. A good model and example for the present chapter is to preserve those treasures of art and faith of so many generations; and, whenever possible, put them to the use intended when they were created and donated: divine worship. Of course, it does not seem very suitable to leave them as mere "museum pieces," when they can be, and should be, at the service of the splendor and dignity of the worship of God.

Regarding the care, use, and assignment of the historico-artistic patrimony of divine worship, the *Circular Letter* of the SCCong of April 11,

1971,[1] is important. In this document the norms and criteria are determined regarding sacred buildings and goods: "the illustrious testimony of the piety of the people towards God ... of the life and history of the Church." Regarding the selection of new works and objects of worship in the churches, "aim for the genuine importance of art, which fosters faith and piety" (ibid., no. 1). Regarding "the ancient works of sacred art, always and everywhere care for them, so that they most excellently serve divine worship and help the active participation of the people of God in the sacred liturgy" (ibid., no. 2).

1. *AAS* 63 (1971), pp. 315–317.

505 **Unumquodque capitulum, sive cathedrale sive collegiale, sua habeat statuta, per legitimum actum capitularem condita atque ab Episcopo dioecesano probata; quae statuta ne immutentur neve abrogentur nisi approbante eodem Episcopo dioecesano.**

Every chapter, whether cathedral or collegiate, is to have its own statutes, established by lawful capitular act and approved by the diocesan bishop. These statutes are not to be changed or abrogated except with the approval of the diocesan bishop.

SOURCES: c. 410 §§ 1 et 2; SCCouncil Litt. circ., 25 iul. 1923 (*AAS* 15 [1923] 453)

CROSS REFERENCES: cc. 94–95, 119

COMMENTARY

Fernando Loza

1. Three prescriptions are established: the obligation that every chapter have its own statutes; that they be established by "a lawful act of the chapter"; and their necessary approval be obtained from the bishop, both for acquiring legal effect and their possible modification or abrogation.

2. Regarding the establishment of the statutes, keep in mind what c. 94 says about the obligations that are implied for the corporation (chapter college, in this case) and for each one of its members.

With respect to "collegial acts," see the new regulations that c. 119 establishes; and especially what is provided in its no. 3°: "that which affects all as individuals must be approved by all." It is evident that certain provisions of the statutes bind each and every one of the chapter members. Therefore, it is a demand on the person and his freedom to require, as does the norm, a unanimous vote regarding the considerations that can affect, for example, acquired goods and rights, or other important obligations.

3. *The statutes*

a) They must be faithful to the new regulations of the Code.

b) They can preserve and integrate many prescriptions of the former statutes as long as they are compatible with the new legal configurations,

which perhaps for centuries have promoted the life of the chapter and have shown themselves to be useful and fruitful for chapter activity.

c) With time and experience, they can be perfected, likewise in light of what other chapters have been productively and usefully establishing and realizing; they can be, therefore, corrected and modified in a way that time and experience, their own and that of others, has shown to be unsuitable or perfectible.

4. The required approval of the statutes by the diocesan bishop is also necessary for their modification or abrogation. Such episcopal approval is what gives the statutes legal effect. It amounts to promulgation as a law for the chapter and its members (c. 94 § 3).

5. *Regulation*: Although the Code does not prescribe it, it is very important for the chapter also to establish its own Regulations, which, pursuant to c. 95, regulate more specific matters regarding chapter life and activity, and which, by their nature, do not have an appropriate place in the statutes. Such Regulations can determine and detail, for example, the periodicity, procedure, and place of chapter meetings; the terms of presidency for ordinary and extraordinary liturgical celebrations; norms of presidency, etc.

For legal effect and modification of such Regulations approval of the diocesan bishop is not required, although it would be important that his criterion and possible observations on the subject be sought.

Likewise it could be opportune for each chapter to have its own *Liturgical Directory* for acts of worship, which is its primary function (c. 503).

506 **§ 1. Statuta capituli, salvis semper fundationis legibus, ipsam capituli constitutionem et numerum canonicorum determinent; definiant quaenam a capitulo et a singulis canonicis ad cultum divinum necnon administerium persolvendum sint peragenda; decernant conventus in quibus capituli negotia agantur atque, salvis quidem iuris universalis praescriptis, condiciones statuant ad validitatem liceitatemque negotiorum requisitas.**

§ 2. In statutis etiam definiantur emolumenta, tum stabilia tum occasione perfuncti muneris solvenda necnon, attentis normis a Sancta Sede latis, quaenam sint canonicorum insignia.

§ 1. The statutes of a chapter, while preserving always the laws of the foundation, are to determine the nature of the chapter and the number of canons. They are to define what the chapter and the individual canons are to do in carrying out divine worship and their ministry. They are to decide the meetings at which chapter business is conducted and, while observing the provisions of the universal law, they are to prescribe the conditions required for the validity and for the lawfulness of the proceedings.

§ 2. In the statutes the remuneration is also to be defined, both the fixed salary and the amounts to be paid on the occasion of discharging the office; so too, having taken account of the norms laid down by the Holy See, the insignia of the canons.

SOURCES: § 1: cc 411 §§ 1 et 2, 412–422
§ 2: cc. 409, 420, 421 § 2, 422; SCCong Litt. circ., 30 oct. 1970 (*AAS* 63 [1971] 314–315); Signatura Decisio, 26 iun. 1971

CROSS REFERENCES: cc. 94, 119

COMMENTARY

Fernando Loza

1. *Importance of the statutes.* The legislator, with the highest respect for the internal autonomy of the chapters, leaves in their hands the key instrument so that they themselves configure their life and ecclesial work within the established legal context: the elaboration of their own statutes. Thus there is a wide margin for initiative and creativity for each chapter,

according to its idiosyncrasies, traditions, and historical and present peculiarities; but always subject to the common and particular law that each Bishops' Conference can establish.

2. *The foundational laws.* Before determining the basic and fundamental content of the statutes, the norm poses a categorical phrase: "while preserving always the laws of the foundation." J. Sanchez correctly comments: "Respect for foundational laws is a constant preoccupation of canonical legislation. With the complete restructuring of the subject, it would not be unusual that one or several foundational laws not agree with the created situation simply because the situation was different when they were made. In this probable case, given the categorical statement of respect toward these laws, we believe that the best and, in many cases, perhaps the only possible way out is an appeal to the Apostolic See for its decision."[1]

3. *Content of the statutes.* The canon enumerates and establishes as a precept, in its § 1, the fundamental content that must make up the statutes. Besides those that are enumerated, it will be important to establish specific statutory norms regarding other important issues: obligations of a chapter regarding Eucharistic celebration or prayer/chant of the Liturgy of the Hours; residency, vacations, retirement and resignations of canons; rights for funerals and burial; preservation and usufruct of the patrimony of the chapter and of the cathedral and collegiate church (e.g., participation in profits). These and other similar issues must be clearly regulated in the statutes.

Regarding the conditions required for the validity and lawfulness of the acts, what the statutes add must be harmonized with the provisions of c. 119.

4. *Remunerations.* It is only just that the canons receive remuneration for their work in office, without detriment to what else they may receive from other offices.

The Code does not regulate such remunerations (as did the *CIC*/1917 with a complicated and even trivial set of regulations). But the norm does establish that there are "to be defined, both the fixed salary and the amounts to be paid on the occasion of discharging the office"(§ 2). The quantity and proper portion of those recompenses are to be determined "in the statutes" (ibid.). Therefore, it is a subject of statutory preceptive determination. Regarding remuneration, the following will have to be kept very much in mind:

a) the "laws of the foundation";

b) everything that book V of the Code establishes;

1. J. SÁNCHEZ, commentary on c. 506, in *Salamanca Com*, p. 273.

c) everything determined by the respective Bishops' Conference and the legislation of the diocese itself;

d) acquired rights.

Because the economic question is always a delicate subject susceptible to supposed or real grievances, the requirements of justice will have to be observed scrupulously. It is not giving everyone the same, but rendering to each his due. Total egalitarianism, besides being impossible, would be unjust, and, therefore, it cannot be Christian or rooted in the Gospel.

Given the complexity of the issue, it seems necessary, or at least very important, that the establishment of statutes regarding renumerations be preceded by a thorough study of the juridical elements (canonical and civil) that must be kept in mind and harmonized in fairness. It will always be good that, regarding that prior study, there be an honest dialogue between the chapter and the diocesan bishop.

We think J.I. Arrieta's observation on the subject is relevant indeed: "The suppression of the beneficial system, supported by Vatican Council II (*PO* 20), implies in general terms a good modification of the economic context in which the chapter is now situated, which in some way will have to be adapting the provisions of book V. Nevertheless, within the temporary regimen, the possible rights acquired by the members of the chapter should be respected, and also attention should be paid to the diversity of possessory titles that in each case can be adduced regarding patrimonial goods that the chapter administers, and which entail a different juridical treatment, keeping in mind the juridical system of each State."[2]

5. *Insignias of the canons.* Because it is the primary function of the chapter to profess to God a most solemn liturgical worship (c. 503), it is logical that the canons use special and suitable vestments for such worship. Throughout history, the tastes and sensibilities of the ages have been excessively ornate regarding the so called "choral dress or habit."

The norm preserves the habit, leaving its specific determination to the statutes of each chapter, but providing that it has to be "in agreement with the norms given by the Holy See" (§ 2). Regarding the *vestes corales*, there are several normative documents that regulate that subject. They are: the Instruction *Ut sive sollicite* of the Papal Secretariat, dated March 31, 1969.[3] In fulfillment of this Instruction, the SCCong published the Circular Letter *Per instructionem, "Ut sive sollicite": De reformatione vestium choralium*,[4] dated October 30, 1970. Finally, the Sacred Congregation for Clergy, on March 18, 1987, published another Circular Letter, *De canonicorum vestibus choralibus insignibusque*,[5] by which it confirmed

2. J.I. ARRIETA, commentary on cc. 503–507, in *Pamplona Com.*
3. *AAS* 61 (1969), pp. 334–340.
4. *AAS* 63 (1971), pp. 314–315.
5. *Comm.* 19 (1987), pp. 12–13.

the provisions of the prior circular Letter, and urged its observance and regulated in a more detailed way the use of the choral vestments.

From the cited documents is drawn the current regulation of the specific use of the choral habit:

— *all* privileges for the canons are abolished, even those hundreds of years old and immemorial, regarding the use of insignias and *pontifical* emblems (*Circular Letter*, October 30, 1970, no. 1);

— the color *purple* of the cape is only lawful for the canons who have an episcopal character (*Circular Letter*, October 30, 1970, no. 2);

— the remaining canons will use a *black cape or ash colored*, with purple trimming (ibid.);

— the chapters, with the consent of the bishop, can request (of the CC) the faculty of using a light purple colored cape. This faculty will be granted "in singulis casibus" (*Circular Letter*, March 18, 1987, no. 3);

— the choral vestment can only be used inside the church (cathedral or collegiate) and in liturgical celebrations. Outside of these churches, it is only lawful for them to be used by canons whom the bishop designates to represent him in certain circumstances (*Circular Letter*, March 18, 1987, no. 4);

— the canons who possess an honorific title granted by the Holy See may not use as a choral habit the emblems and insignias proper to that title (*Circular Letter*, March 18, 1987, no. 5).

507 **§ 1. Inter canonicos habeatur qui capituli praesit, atque alia etiam constituantur officia ad normam statuorum, ratione quoque habita usus in regione vigentis.**

§ 2. Clericis ad capitulum non pertinentibus, committi possunt alia officia, quibus ipsi, ad normam statuorum, canonicis auxilium praebeant.

§ 1. Among the canons there is to be one who presides over the chapter. In accordance with the statutes other offices are also to be established, account having been taken of the practice prevailing in the region.

§ 2. Other offices may be allotted to clerics not belonging to the chapter, so that, in accordance with the statutes, they may provide assistance to the canons.

SOURCES: § 1: c. 393 § 1; Pius PP. XI, m. p. Bibliorum scientiam, 27 apr. 1924 (*AAS* 16 [1924] 180)
§ 2: c. 393 § 2

CROSS REFERENCES: cc. 118, 147, 157, 164–179, 509 § 1

COMMENTARY

Fernando Loza

1. *The president of the chapter*

a) This norm prescribes that there has to be ("habeatur") a canon who presides over the college. The presidency is the most important office of the chapter. The function of the president is to direct and coordinate the activities of the chapter *ad normam iuris*; to moderate meetings; to assure compliance with the statutes and regulations; to represent the chapter; and to act in its name, pursuant to c. 118. He has no jurisdiction over the canons; he is only *primus inter pares*. He will be called President or, according to traditional uses, Dean or any other similar title.

b) Designation of the president: The divergences of interpretation of this canon and c. 509 § 1 led to putting a question to the PCILT. The formula of dubious purpose was, "whether it is required to elect the president of a chapter of canons in the light of c. 509." The response was:

negative.[1] This meant that c. 509 § 1 does not impose, as the only form of designation of the president, the elective system; other methods are permitted, according to the statute and the present usage in the region, for example, if, by lawful custom or tradition, or by a statutory norm, the designation of the president is by free episcopal appointment, or it falls to the most senior canon of the chapter, or is determined by the foundational law, etc. (cf. c. 147).

Likewise in the designation of president, acquired rights will have to be respected, when there already exists a President or Dean, lawfully designated or elected prior to the present regulations (cc. 4 and 9).

2. *Other offices*. Except for the president and penitentiary canon (c. 508), the Code does not specify what they have to be (as the *CIC*/1917 did); but they "will be designated" ("constituantur"), pursuant to the statutes and the current usage in the region. This is one more proof that the legislator is showing respect for the local traditions proper to each chapter.

The constitution and name of those other canonical offices can be opportunely inspired in the former discipline and local tradition, for example, theologian, prebendary, doctoral, prefect of ceremonies, master of the chapel, church warden, secretary, treasurer, etc.

3. Paragraph 2 likewise provides that to "other clerics" (they can be, therefore, deacons), not belonging to the chapter, various offices can be entrusted that "aid the canons" in their chapter functions. The designation for such auxiliary offices corresponds to the bishop, pursuant to c. 157. For their appointment, it is not required to obtain the opinion of the chapter.

1. May 20, 1989, in *AAS* 81 (1989), p. 991.

508 **§ 1. Paenitentiarius canonicus tum ecclesiae cathedralis tum ecclesiae collegialis vi officii habet facultatem ordinariam, quam tamen aliis delegare non potest, absolvendi in foro sacramentali a censuris latae sententiae non declaratis, Apostolicae Sedi non reservatis, in dioecesi extraneos quoque, dioecesanos autem etiam extra territorium dioecesis.**

§ 2. Ubi deficit capitulum, Episcopus dioecesanus sacerdotem constituat ad idem munus implendum.

§ 1. The canon penitentiary both of a cathedral church and of a collegiate church has by law ordinary faculties, which he cannot however delegate to others, to absolve in the sacramental forum from *latae sententiae* censures which have not been declared and are not reserved to the Apostolic See. Within the diocese he can absolve not only diocesans but outsiders also, whereas he can absolve diocesans even outside the diocese.

§ 2. Where there is no chapter, the diocesan bishop is to appoint a priest to fulfil this office.

SOURCES: § 1: c. 401 § 1

CROSS REFERENCES: cc. 132 § 1, 147, 157, 478 § 2, 966, 968, 970, 1331–1333, 1341–1342, 1354 § 3, 1358, 1367, 1370 § 1, 1378 § 1, 1382, 1388 § 1

COMMENTARY

Fernando Loza

1. One of the offices expressly prescribed by the norm is the "canon penitentiary." His function is very important as *special* minister of the sacrament of penance, with special faculties for such ministry.

The bishop must designate him (cc. 147, 157, 966 and 968 § 1) from among the members of the chapter, both for cathedral and collegiate churches. If a suitable preparation is required to grant the faculty of hearing confessions (c. 970), this requirement is greater in the penitentiary's case: it will be important to choose an exemplary priest, experienced and prudent, with a good theological and canonical formation.

a) Because of his office he has "ordinary faculty, not delegable" (cf. c. 132 § 1). It is expressly denominated faculty and not power of juris-

diction (with greater terminological and conceptual strictness than had c. 872 *CIC*/1917), since pure sacramental absolution is not strictly an act of "power of governance" (c. 129 § 1).

b) The scope of such faculty is exclusively within the sacramental forum; its object and special subject (besides the pardoning of sins) is the absolution of censures *latae sententiae*. These censures are: excommunication, suspension, and interdict (cc. 1331–1333). But on the condition that they have not been declared by judgment or decree (cc. 1334 § 1, 1341–1342) nor reserved to the Holy See (cc. 1354 § 3, 1367, 1370 § 1, 1378 § 1, 1382, 1388 § 1, 1358).

Regarding the jurisdictional nature of the act of the remission of such censures within the sacramental forum see commentary on c. 1355 § 2.

c) The beneficiary subjects of this faculty are all the diocesan faithful, if they go to their own penitentiary, even being out of the territory of the diocese; and all those who are within the diocese.

2. To avoid the dangerous confusion and mixing between the external forum and the internal sacramental forum, c. 478 § 2 provides that the office of penitentiary is incompatible with those of the vicar general and episcopal vicar. For the same reason, although the norm does not explicitly mention it, it is also incompatible with the work of the judicial vicar (cc. 391 § 2 and 1420 §§ 1 and 2). The principle of incompatibility among offices is sanctioned in c. 152.

3. Paragraph 2 emphasizes the clear intent of the legislator to facilitate and guarantee the faithful recourse to the sacrament of penance, especially in cases of certain censures. Therefore the canon provides that, where there is no cathedral or collegiate church, the bishop must appoint "a priest who performs the same function." He will be able to be called "penitentiary," since he has the same faculties of the canon penitentiary.

4. The intention of the norm makes it advisable for the penitentiary to have a known, fixed see, and to be accessible at convenient days and times so that the penitents can easily go to him, pursuant to c. 986 § 1. Regarding this point it is interesting to see what c. 401 § 2 *CIC*/1917 established; it is a useful reference: "he must remain in the confessional of the chapter church to which he has been assigned for the time that in the judgment of the bishop is the most opportune for the convenience of the faithful, and to be available for the confession of all who go to him, though it be during divine offices."

509 **§ 1. Episcopi diœcesani, audito capitulo, non autem Administratoris diœcesani, est omnes et singulos conferre canonicatus, tum in ecclesia cathedrali tum in ecclesia collegiali, revocato quolibet contrario privilegio; eiusdem Episcopi est confirmare electum ab ipso capitulo, qui eidem præsit.**

§ 2. Canonicatus Episcopus diœcesanus conferat tantum sacerdotibus doctrina vitæque integritate præstantibus, qui laudabiliter ministerium exercuerunt.

§ 1. It belongs to the diocesan bishop, after consultation with the chapter, but not to the diocesan Administrator, to bestow each and every canonry both in the cathedral church and in a collegiate church; any privilege to the contrary is revoked. It is also for the diocesan bishop to confirm the person elected by the chapter to preside over it.

§ 2. The diocesan bishop is to appoint to canonries only priests who are of sound doctrine and life and who have exercised a praiseworthy ministry.

SOURCES: § 1: c 403, CodCom Resp., 26 nov. 1922 (*AAS* 15 [1923] 128); CodCom Resp. III, 10 nov. 1925 (*AAS* 17 [1925] 582); SCCouncil Resol., 4 mar. 1933 (*AAS* 27 [1935] 341–344); SCCouncil Resol., 15 iun. 1940 (*AAS* 33 [1941] 333–334)
§ 2: c. 404 §§ 1 et 2

CROSS REFERENCES: cc. 17, 146–147, 157, 376, 381, 507

COMMENTARY

Fernando Loza

1. The explicit intent of the legislator is made clear that the appointment of each and every one of the canons is within the exclusive competence of the diocesan bishop. It was the express intent of Vatican Council II (*CD* 28) to suppress every right or privilege that could restrict the freedom of the bishop in choosing offices for his priests. Such conciliar intent was included and regulated in *Ecclesiae Sanctae* I, 18 § 1, by suppressing all prior privileges that "have been given to physical or moral persons with the right to elect, nominate or present to any non-consistorial benefice" (ibid.).

Pursuant to this pre-Code regulation, the present canon specifically sanctions: "any privilege to the contrary is revoked."

2. In accordance with cc. 147 and 157, this norm establishes that only the diocesan bishop can confer canonries, with the express exclusion of the diocesan administrator. The formulation is so clear and specific in its text and context (c. 17) that it does not allow, in our judgment, any expansive interpretation for others to appoint canons: the legislator grants said competency exclusively to the "diocesan bishop" strictly speaking (cc. 376 and 381 § 1).

Before bestowing canonries, the bishop must listen to the opinion of the chapter. It is preceptive to do so, but its judgment is not binding.

3. Regarding the designation of the president of the chapter, see the commentary on c. 507 § 1: whether he has been elected by the chapter, or is determined by the statutes of foundational law, "it is for the Bishop" to confirm the candidate in his presidential office.

We believe that the diocesan Administrator is not competent to confirm the president because the original Latin text of the canon seems to exclude him: "eiusdem Episcopi est…" In our judgment, the *eiusdem* affects and identifies the only competent subject that the norm classifies: "Episcopi dioecesani ... non autem Administratoris diocesani, est…" Such subject (with the explicit exception attached) is the only office holder of dual competence: to appoint canons and confirm the president.

4. Paragraph 2 imposes on the bishop the obligation of appointing canons from among priests with qualities and merit that the norm itself specifies: of sound doctrine and life and who have exercised praiseworthy ministry. The tenor of the canon is very meaningful: "is to appoint to canonries only priests who…" By virtue of the requirement of "having exercised a praiseworthy ministry," the norm excludes from appointment as canon a recently ordained priest. The express intent of the legislator is clear that every chapter be a prestigious college of priests qualified by their doctrine, exemplary life, and ministerial experience.

5. Since the Code does not regulate anything about taking possession of the canonries (which was preceptive in the *CIC*/1917, c. 405 § 1), it is not presently necessary or obligatory. It seems clear that the episcopal selection of canonry and the attached office is sufficient for possession of the canonical rights and duties pertaining thereto (c. 146).

The particular law or the statutes will determine whether such taking of possession has to be done and how.

6. Likewise, no canon exists that establishes whether the canonries have to be conferred *in perpetuum* or *ad tempus* (fixed) of simply *durante munere* (vicars, rector of the seminary, etc.).

It remains, therefore, to the prudent determination of the diocesan bishop. On this point, nevertheless, he will have to keep in mind the foundational law and acquired rights.

7. Regarding the appointment of honorary canons, the code regulates nothing about it. In the drafting of codifications, it was preferred to refer the question to the determination of the particular statutes.[1] Their possible appointment (cf. CIC/1917, c. 406) is the exclusive competence of the diocesan bishop, pursuant to the present canon.

1. *Comm.* 13 (1981), pp. 137-138, *sub* c. 325.

510 **§ 1. Capitulo canonicorum ne amplius uniantur paroeciae; quae unitae alicui capitulo exstent, ab Episcopo dioecesano a capitulo separentur.**

§ 2. In ecclesia, quae simul sit paroecialis et capitularis, designetur parochus, sive inter capitulares delectus, sive non qui parochus omnibus obstringitur officiis atque gaudet iuribus et facultatibus quae ad normam iuris propria sunt parochi.

§ 3. Episcopi dioecesani est certas statuere normas, quibus officia pastoralia parochi atque munera capitulo propria debite componantur, cavendo ne parochus capitularibus nec capitulum paroecialibus functionibus impedimento sit; conflictus, si quidam habeantur, dirimat Episcopus dioecesanus, qui imprimis curet ut fidelium necessitatibus pastoralibus apte prospiciatur.

§ 4. Quae ecclesiae, paroeciali simul et capitulari, conferantur eleemosynae, praesumuntur datae paroeciae, nisi aliud constet.

§ 1. Parishes are no longer to be united with chapters of canons. Those which are united to a chapter are to be separated from it by the diocesan bishop.

§ 2. In a church which is at the same time a parochial and a capitular church, a parish priest is to be appointed, whether chosen from the chapter or not. He is bound by all the obligations and he enjoys all the rights and faculties which by law belong to a parish priest.

§ 3. The diocesan bishop is to establish certain norms whereby the pastoral duties of the parish priest and the roles proper to the chapter are duly harmonised, so that the parish priest is not a hindrance to capitular functions, nor the chapter to those of the parish. Any conflicts which may arise are to be settled by the diocesan bishop, who is to ensure above all that the pastoral needs of the faithful are suitably provided for.

§ 4. Alms given to a church which is at the same time a parochial and a capitular church, are presumed to be given to the parish, unless it is established otherwise.

SOURCES: § 1: *ES* I, 21 § 2
§ 2: c. 415 § 1; SCCouncil Resol., 17 mar. 1917 (*AAS* 9 [1917] 384–394); SCCouncil Resol., 19 feb. 1921 (*AAS* 14 [1922] 551–554); *ES* I, 21 § 2
§ 3: c. 415 §§ 1 et 4
§ 4: c. 415 § 2,5°

CROSS REFERENCES: cc. 520 § 1, 523, 682 § 1

COMMENTARY

Fernando Loza

1. The canon substantially modifies the discipline of the *CIC*/1917 (in its cc. 415ff and 1423 § 2) that contemplated three cases of *union-relationship* between the chapter and the parish:

a) full union so that the chapter collegially exercises the functions of parish priest, as collegial holder of the office;

b) the office of parish priest corresponded by law to one of the canons, annexed to his prebend (e.g., Dean, Abbot);

c) although the chapter and the parish were juridically independent, the church itself was at the same time parochial and capitular.

2. Already *Ecclessiae Sanctae* I, 21 § 2 prohibited further associating of parishes and chapters and prescribed that those thus united be separated.

This temporary norm is included and regulated now with greater precision by this canon, pursuant to the prohibition established in c. 520: "A juridical person may not be a parish priest" (with the exception that the same norm adds).

The present canon specifically establishes

a) that, afterwards, canonical chapters and parishes shall not be united;

b) that those still united "are to be separated from it" by the diocesan bishop. It is no longer required that the bishop consult the chapter and the council of priests (as the temporary norm *ES* 1, 21 § 2 required).

3. Paragraph 2 of the canon contemplates the only legal and factual method, the same church, "which is at the same time a parochial and a capitular church." In such cases (which are the most frequent) the bishop must appoint a parish priest, with all the rights and duties of the office. Such a parish priest can be either one of the capitular priests or any other priest. It seems necessary, as parish priest of a cathedral or collegial temple, to appoint a priest qualified by his knowledge, integrity of life, and ministerial experience.

4. The fact that the same church is the see of the parish and of the chapter can cause certain situations of collision or possible conflicts. The norm, with wise prudence and foresight, turns to the bishop "to establish certain norms," in which they are determined with precision and "are duly harmonised" with the obligations and functions proper to the parish priest and chapter. As a conflict can arise in spite of such clear and certain norms, the bishop will resolve it. And the same norm offers a criterion of

solution. The primary concern is "the pastoral needs of the faithful." This criterion must prevail over other possible *capitular* reasons, as long as the genuine rights of the chapter, which, as well as those of the parish priest and parish, the bishop must defend and guarantee, pursuant to the law (common and particular) and with his prudence of governance.

5. In § 4 the norm establishes a *legal presumption* regarding "alms." We think that in the term *alms* is included any type of offering or donations (cc. 222 § 1 and 1261).

The intentions of the donor should always prevail and be scrupulously respected; but unless he or she states otherwise, it is *presumed* that such offers or alms are intended for the parish.

CAPUT V
De consilio pastorali

CHAPTER V
The Pastoral Council

511 **In singulis dioecesibus, quatenus pastoralia adiuncta id suadeant, constituatur consilium pastorale, cuius est sub auctoritate Episcopi ea quae opera pastoralia in dioecesi spectant investigare, perpendere atque de eis conclusiones practicas proponere.**

In each diocese, in so far as pastoral circumstances suggest, a pastoral council is to be established. Its function, under the authority of the bishop, is to study and weigh those matters which concern the pastoral works in the diocese, and to propose practical conclusions concerning them.

SOURCES: *CD* 27; *AG* 30; *PO* 7; *ES* I, 16 § 1; III, 20; *OChr* 6, 12; *DPMB* 204; *UT* 920–921

CROSS REFERENCES: cc. 514, 208, 211, 212 § 2 et 3, 216, 221 § 1, 223, 225, 443 § 5, 463 § 1, 5°, 119, 369

COMMENTARY

Fernando Loza

1. *Origin of the pastoral council*

The pastoral council is a new institution in the canonical system. It arises from Vatican Council II (*CD* 27), which clearly expressed its desire ("valde optandum est") that there be instituted in the dioceses a council presided over by the bishop, to study and ponder pastoral issues and to draw practical conclusions that would guide the bishop in his mission as pastor.

Subsequent documents from the Holy See, of different natures, impelled the creation and established temporary regulations of this council. There were three documents: *Ecclesiae Sanctae* I 16–17, the circular Letter *Omnes christifideles* of the SCCong,[1] and *DPMB* 20.

It should be noted that such documents and the particular statutory regulations regarding these pastoral councils did not always reflect identical figures of pastoral councils, nor were they exempt from vacillations common to an experimental phase. Nevertheless, they contributed to a progressive maturation of the issue in the drafting of the codifications, and are an indispensable, interpretive reference for cc. 511–514, to observe what the Code preserves, modifies, or suppresses of that temporary pre-Code regulation.[2]

2. *Establishment*

This canon determines the constitution and functions of the pastoral council. Its constitution is not prescriptive (as is the council of priests: c. 495 § 1); but neither is it simply facultative. The norm establishes as a criterion for its constitution "insofar as pastoral circumstances suggest," of each diocese. The verification of this conditional clause is left to the prudence of the bishop, who will judge the advisability and importance of the constitution of the council, after carefully weighing the circumstance of his diocesan Church.

3. *Nature and functions*

The canon strictly delimits the pastoral function—and thereby its nature—of this council: "Its function ... is to study and weigh those matters which concern the pastoral works in the diocese, and to propose practical conclusions concerning them." In this consists the purpose, and in it the end, of the council.

Therefore, it is an organization to advise the bishop, circumscribed to the diocesan pastoral hierarchy: "aiding the hierarchy in the pastoral function that is proper to it";[3] it has no function of governance; it does not possess strict competence.

1. January 25, 1973, *EV* IV, pp. 1202–1208, nos. 6–11 (not published in *AAS*).
2. Cf. J.I. Arrieta, "El régimen jurídico de los Consejos Presbiteral y Pastoral," in *Ius Canonicum* 21 (1981), pp. 562–605; J.M. Díaz Moreno, "Los Consejos Pastorales y su regulación canónica," in *Revista Española de Derecho Canónico* 41 (1985), pp. 165–179; A. Marzoa, "Los Consejos Pastorales diocesanos e infradiocesanos," in *Derecho Particular de la Iglesia en España* (Salamanca 1986), pp. 67-102.
3. SCCong, Letter *Omnes christifideles*, cit., no. 4.

Its nature and function are specifically pastoral, as instrumental help to the diocesan bishop. Even in this context, a directive and coordinating function for all the pastoral activity in the diocese can not be attributed to this council because:

a) such direction-coordination is proper and exclusive to the titular bodies of the "potestas regiminis," which the council does not have;

b) the rights and freedom of the faithful in individual and associates apostolates have to remain always guaranteed (cc. 208–231 and 321–329);

c) the intended coordinating function (which *DPMB* 204 insinuated) does not have a basis in *Christus Dominus* 27 of Vatican Council II,[4] nor is it contemplated by the Code. The term *omnia* (from the *Schema* of 1977, c. 326) was expressly suppressed in the published text, referring to the study of pastoral activities, leaving the canon formulated in this way: "ea quae opera pastoralia in diócesis spectant investigare."[5] It is not, therefore, a function of this council (being a consultative body to the bishop) to understand and deal with every pastoral activity that is conducted in the diocese, but only the diocesan hierarchical pastoral activity, which the bishop submits to it for its advice.

4. *Limitations of pastoral councils*

a) diocesan: this is the exclusive range of the pastoral council. The subsection "in dioecesis" is introduced in the text of the canon precisely to reaffirm the diocesan limitation and to exclude the constitution of extra-diocesan councils;[6]

b) thematic: "it cannot address itself to general matters concerning faith, orthodoxy, moral principle, or the universal laws of the Church."[7]

5. *Scope of study and advice.*

For as much has been said about the strict juridical delimitation of this council, in no way is its great importance and breadth of work as a pastoral organization diminished. Within the route and limits that the legislator determines, the activity of the council can be extremely useful and contribute greatly to diocesan ecclesial life. Regarding the numerous issues that can be the object of its study and advice, we summarily offer the

4. Cf. J.I. ARRIETA, "El régimen jurídico...," cit., pp. 591–596.
5. *Comm.* 13 (1981). p 138.
6. *Comm.* 13 (1981). p 138; 14 (1982), p. 219.
7. SCCong, Letter *Omnes christifideles*, cit., no. 9.

indicative and detailed account that was made in the cited letter of the SCCong in no. 9:

— exercise of pastoral care in the diocese;

— missionary, catechetical, and apostolic initiatives in the territory of the diocese;

— foster the doctrinal formation and sacramental life of the diocesan faithful;

— appropriate aids for the pastoral ministry of priests;

— methods of making public opinion sensitive to the problems of the Church;

— to show the bishop the needs of the diocesan Church and to suggest possible measures of pastoral action.

6. *Two specific instances of participation*

a) The Code determines that "the pastoral council of each particular church is to be invited to provincial councils" (c. 443 § 5). Such council must send "two members, designated in a collegial manner. They have only a consultative vote" (ibid.). Regarding collegial acts, cf. c. 119, 1°.

b) The pastoral council must also select for the diocesan Synod lay faithful and members of institutes of consecrated life "in the manner and the number to be determined by the diocesan bishop" (c. 463 § 1, 5°).

7. *In other hierarchical circumscriptions*

Notwithstanding the comments regarding *diocesan boundaries*, there is also the possibility of constituting the pastoral council in other hierarchical circumscriptions: those that are assimilated into the dioceses (c. 368), the military orders (*SMC* I, 1 and XIII, 5), and the personal prelatures (cc. 294–297).

512 **§ 1. Consilium pastorale constat christifidelibus qui in plena communione sint cum Ecclesia catholica, tum clericis, tum membris institutorum vitae consecratae, tum praesertim laicis, quique designantur modo ab Episcopo dioecesano determinato.**

§ 2. Christifideles, qui deputantur ad consilium pastorale, ita seligantur ut per eos universa populi Dei portio, quae dioecesim constituat, revera configuretur, ratione habita diversarum dioecesis regionum, condicionum socialium et professionum, necnon partis quam sive singuli sive cum aliis coniuncti in apostolatu habent.

§ 3. Ad consilium pastorale ne deputentur nisi christifideles certa fide, bonis moribus et prudentia praestantes.

§ 1. A pastoral council is composed of members of Christ's faithful who are in full communion with the catholic Church: clerics, members of institutes of consecrated life, and especially lay people. They are designated in the manner determined by the diocesan bishop.

§ 2. The members of Christ's faithful assigned to the pastoral council are to be selected in such a way that the council truly reflects the entire portion of the people of God which constitutes the diocese, taking account of the different regions of the diocese, of social conditions and professions, and of the part played in the apostolate by the members, whether individually or in association with others.

§ 3. Only those members of Christ's faithful who are outstanding in firm faith, high moral standards and prudence are to be assigned to the pastoral council.

SOURCES: § 1: *CD* 27; *ES* I, 16 § 3; *OChr* 7, 8; *DPMB* 204; *SDO* V, 25; *MR* 56
§ 2: *OChr* 7
§ 3: *OChr* 7, 9

CROSS REFERENCES: cc. 573, 731, 205

COMMENTARY

Fernando Loza

1. *Composition*

Given the nature and functions of the council, its composition has to include the diversity of faithful who form "the entire portion of the People of God which constitutes the diocese" (§ 2). The canon provides that the council will be made up of:

— clerics;

— members of the institutes of consecrated life "with the permission of the competent Superior"[1] and we think as well there should be included members of the societies of apostolic life (for their similarity to them: cf. c. 731);

— laity: the adverb "praesertim" intentionally emphasizes[2] the importance of the laity in this council; a very logical normative criterion, for they are always the largest part of the people of God;

2. *Requirements*

For all the members of the council the norm requires "that they be in full communion with the Catholic Church."... an obvious and necessary requirement, for without that full communion (cf. c. 205) they would not be suitable to perform the advisory function that the diocesan church and its pastor require: "so that the life and activity of the People of God may be brought into greater conformity with the Gospel" (*ES* 16 § 1). The council is neither the proper nor appropriate purview to accommodate voices that *a priori* are known to be dissident and rebellious, of those who do not feel or live the full ecclesial life. Such voices can be (and in certain cases, must be) consulted, and likewise their opinions pondered by the bishops but without their necessarily being included in the context of this institution. This does not mean that the members of the council do not have genuine Christian freedom to loyally show their opinions and criteria about the diocesan pastoral reality;[3] what the norm certainly excludes is designating as members people whose life and criteria do not respond to full communion with the Church.

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1. SCCong, Letter *Omnes christifideles*, January 25, 1973, in *EV* IV, pp. 1202–1208, no. 7 (not published in *AAS*)
2. *Comm.* 13 (1981), p. 139.
3. Cf. SCCong, Letter *Omnes christifideles*, cit., no. 9.

This normative principle is ratified and strengthened by § 3: "Only those members of Christ's faithful who are outstanding in firm faith and high moral standards and prudence are to be assigned." It is for the bishop to confirm and assure himself that these specific requirements of this norm are fulfilled.

3. *Designation*

The method of designating a member is up to the free determination of the diocesan bishop (§ 1): by direct and personal episcopal designation; by designation by the various diocesan sectors (§ 2); by a mixed system (which seems preferable), analogous to what c. 497 indicates for the council of priests, without implying an identity of nature for both councils.

Whatever the manner determined by the bishop to designate the members of the council, in no case will it be strict canonical election (cc. 164–179); the Latin terms used by the norm in this regard are very meaningful: "designantur," "deputantur," "seligantur," "ne deputentur"; it seems clear that the legislator has expressly avoided the technical term of election, which would imply a certain representation.

Regarding membership the canon says nothing; therefore, it is up to the bishop, according to the size of the diocese and the number of faithful in it. However, "it is important that the membership of the pastoral council not be excessive, so that it can devote itself to its work in a suitable manner."[4]

4. *Criteria for designating the members of the council*

It is necessary that the membership "truly reflects ... the diocese" (§ 2). To achieve this ("revera configuretur") the canon states several specific indicative criteria (variety of areas, social conditions, professionals, personal devotion to individual or associated apostolate). Thus, the council must reflect and offer a proper picture of the diocesan pastoral reality in its various territorial, social, and personal aspects so that it can offer the bishop a live and real depiction of what exists, of what is needed and important to be realized in the diocesan pastoral purview.

It must be observed, however, that the members of this council have no juridical representation. This would require a specific method of canonical election (cc. 16ff), and likewise it would imply a method of acting by the representative bound to the represented. Regarding representation, the Commission that studied the *Schema* of 1977, c. 327 (presently c. 512)

4. Ibid., no. 7.

observed: "it is clear that the function of representing all the faithful of the diocese is not attributed to the pastoral council ... the members of this council are not commissioned or elected by the other faithful of the diocese."[5] The members of the council, therefore, have no representation, they act in their own names, with their personal criterion; although in their entirety, they reflect and configure a picture of the diocesan pastoral diversity. The designation and belonging to the council cannot suppose that "the members are not to be spontaneous and to be impersonal, converting them into mere spokesmen for groups or sectors that, on the other hand, have difficulty ever being represented."[6]

5. *Interritual councils*

The possibility that in the same territory there exist hierarchies of different rites, was already contemplated by *Ecclesiae sanctae* I, 16 § 5, and to foster that particular representation. "It is strongly recommended that (where possible) the pastoral council should be inter-ritual, that is, consisting of clerics, religious and laity of the different rites." Supra-diocesan councils are always excluded.

5. *Comm.* 13 (1982), p. 139.
6. A. MARZOA, "Los Consejos Pastorales diocesanos e infradiocesanos," in *Derecho Particular de la Iglesia en España* (Salamanca 1986), p. 76.

513 **§ 1. Consilium pastorale constituitur ad tempus, iuxta praescripta statuorum, quae ab Episcopo dantur.**

§ 2. Sede vacante, consilium pastorale cessat.

§ 1. The pastoral council is appointed for a determinate period, in accordance with the provisions of the statutes drawn up by the bishop.

§ 2. When the see is vacant, the pastoral council lapses.

SOURCES: § 1: *ES* I, 16 § 2; *OChr* 7
§ 2: *OChr* 11

CROSS REFERENCES: cc. 94, 200–203, 511, 514 § 2

COMMENTARY

Fernando Loza

1. The canon deals with the duration and lapse of the council. Its constitution not being preceptive and necessary, its stability cannot be classified as permanent: "it is appointed for a determinate period" (§ 1), at the pleasure of the bishop and according to the statutes he himself establishes (ibid.).

Its term affects the council itself, according to the time determined by the bishop. Once its term has run, the council is extinguished and its renewal requires a new episcopal constitutive act. Nevertheless, nothing hinders any of its members from being substituted during the existence of the council for causes that are justified in the bishop's opinion.

2. Paragraph 2 establishes that "when the see is vacant, the pastoral council lapses." The term "extinguitur" was substituted for "cessat" in the final draft, *ex officio* and for greater clarity and juridical precision.[1] Given that it is not extinguished, but merely lapsed, the new bishop can confirm and ratify it, or proceed to a partial renewal of its members, "without the necessity of a new formal constitutive act, which an extinguishment would require."[2] Nevertheless, it is clear that "the new bishop has no obligation to preserve the institution of pastoral council in the diocese of which he takes possession or to reconstitute it."[3] (c. 511).

1. Cf. *Comm.* 14 (1982), p. 220.
2. A. MARZOA, "Los Consejos Pastorales diocesanos e infradiocesanos," in *Derecho Particular de la Iglesia en España* (Salamanca 1986), p. 86.
3. J.I. ARRIETA, commentary on c. 513, in *Pamplona Com.*

514 **§ 1. Consilium pastorale, quod voto gaudet tantum consultivo, iuxta necessitates apostolatus convocare eique praeesse ad solum Episcopum dioecesanum pertinet; ad quem etiam unice spectat, quae in consilio pertractata sunt publici iuris facere.**

§ 2. Saltem semel in anno convocetur.

§ 1. The pastoral council has only a consultative vote. It is for the diocesan Bishop alone to convene it, according to the needs of the apostolate, and to preside over it. He alone has the right to make public the matters dealt with in the council.

§ 2. It is to be convened at least once a year.

SOURCES: § 1: *CD* 27; *ES* I, 16 § 2; *OChr* 8, 10; *DPMB* 20
§ 2: *ES* I, 16 § 2

CROSS REFERENCES: cc. 511, 134 § 3, 391

COMMENTARY

Fernando Loza

1. *The bishop convenes and presides over the pastoral council*

Since the council is an institution to advise the bishop, it is logical that the canon exclusively reserves its convening and presidency to him ("ad solum Episcopum diocesanum pertinet": § 1). He can do so personally, or through a lawful representative (cc. 134 § 3, 391). Nevertheless, it certainly seems preferable that the bishop personally preside, and so directly hear the opinions, suggestions, proposals, and practical conclusions that the council members might offer. Thus, without intermediaries, the direct voice of its members will reach him, and he will be able to ask for clarifications and to establish a dialogue with them regarding the issues that arise. The function of giving and receiving advice works better in an immediate and personal relationship.

Convening of the council will be done "according to the needs of the apostolate." Once again the norm leaves the determination of the advisability and need to consult the council to the prudence and conscientiousness of the bishop, and always keeping in mind § 2: "wherever it is constituted, it must be convened at least once a year." The canon determines that minimum of activity, which justifies its constitution (c. 511). The intent of the legislator is evident; he does not want this council to be a

decorative institution. If the pastoral circumstances of the diocese advise it, it should be constituted and act; otherwise, it need not be constituted.

2. *Consultative vote*

The council is not a body that participates in the jurisdictional governance of the diocese. Therefore, it cannot be classified as a consultative body in the strict sense of the term, nor will its activity have the effect of a juridical consultation (as in the case of the council of priests and the college of consultors: cc. 495, 500 § 2, 502).

Only in the broad sense can "consultation" be spoken of regarding the pastoral council. With this necessary clarification the expression of the norm: "it has only consultative vote" (§ 1) must be interpreted. The council will offer suggestions, proposals, guidelines, and practical conclusions. All of this can be summarized and specified at the end of a session by the external formality of a vote, but this is only one method of confirming the majority's opinion or criterion of the council, but without any binding effect on the bishop.[1] And this is what the true consultative merit that the legislator has determined for the council means; it is not deliberative and it is not binding. Receiving the opinion of the council, it is left to the prudence of the bishop to evaluate the advice received and to take the course of action that he feels is worthwhile.[2]

3. *Secrecy and publicity*

The matters dealt with by the council are only for the bishop. Hence the canon in § 1 implicitly establishes an obligation of secrecy for the members by determining that it is for only the bishop ("unice spectat") to make public the council's deliberations. Therefore, the members of the council must maintain absolute secrecy regarding the matters discussed in the sessions, as long as the bishop has not decided to make them public, either totally or partially, in his best judgment. It would be *contra ius* for the council or one of its members, not to have the requirement that the norm demands by divulging the subject matter. For example, in a communiqué or press release, interviews by the media, etc., even when the bishop has adopted the opinion of the council with explicit approval. It is one thing to adopt it, and another, quite different, to decide to make it public.

1. Cf. L. CHIAPPETTA, *Il Codice di Diritto Canónico,* I (Naples 1988), p.608.
2. SCCong, Letter *Omnes christifideles,* January 25, 1973, in *EV* IV, pp. 1202–1208, no. 8 (not published in *AAS*).

CAPUT VI
De paroeciis, de parochis et de vicariis paroecialibus

CHAPTER VI
Parishes, Parish Priests and Assistant Priests

515 **§ 1. Paroecia est certa communitas christifidelium in Ecclesia particulari stabiliter constituta, cuius cura pastoralis, sub auctoritate Episcopi dioecesani, committitur parocho, qua proprio eiusdem pastori.**

§ 2. Paroecias erigere, supprimere aut eas innovare unius est Episcopi dioecesani, qui paroecias ne erigat aut supprimat, neve eas notabiliter innovet, nisi audito consilio presbyterali.

§ 3. Paroecia legitime erecta personalitate iuridica ipso iure gaudet.

§ 1. A parish is a certain community of Christ's faithful stably established within a particular church, whose pastoral care, under the authority of the diocesan bishop, is entrusted to a parish priest as its proper pastor.

§ 2. The diocesan bishop alone can establish, suppress or alter parishes. He is not to establish, suppress or notably alter them unless he has consulted the council of priests.

§ 3. A lawfully established parish has juridical personality by virtue of the law itself.

SOURCES: § 1: cc. 216 §§ 1–3, 451 § 1; *SC* 42; *LG* 26; *CD* 30; *AA* 10; *AG* 37
§ 2: c. 216 § 1; CodCom Resp., 26 sep. 1921; SCCouncil Resol., 14 ian. 1922 (*AAS* 14 [1922] 229–233); Secr. St. Decl., 10 nov. 1922; *CD* 32; *ES* I, 21 § 3; PCIDSVC Resp., 3 iul. 1969 (*AAS* [1969] 551); *DPMB* 206
§ 3: cc. 99, 100 § 1

CROSS REFERENCES: § 1: cc. 374 § 1, 519
§ 2: cc. 127 § 2, 2°, 495
§ 3: cc. 113–123, 532

COMMENTARY

Antonio S. Sánchez-Gil

The canonical regulation of the parish and the parochial offices, situated at the center of the normative material regarding the internal legal system of the particular churches, received in the present Code the unitary treatment and systematic placement that corresponds to the consideration of the parochial community as a public organizational structure of the particular church. In the *CIC*/1917, on the other hand, the regulations regarding the parish and the parochial offices received a fragmentary treatment, dispersed among the norms regarding *clerics in particular* (cf. book II. sec. II *CIC*/1917) and the norms regarding *benefices* (cf. book III, pt. V *CIC*/1917).

1. Paragraph 1 of the canon, which opens the parochial normative material, contains a markedly innovative definition of parish. It is important to remember that the *CIC*/1917, without intending an essential definition, was limited to describing the parish as each one of the different territorial parts of the diocese that has its own church with a defined group of people and with a rector at its head as its pastor for the necessary care of souls (cf. c. 216 §§ 1 and 3 *CIC*/1917). Afterwards, the canonical doctrine was reinforced by separating the constitutive elements of the concept of parish with the aim of offering an essential idea of the same.[1] Among the various formulations elaborated by the doctrine deemed inappropriate for not responding to a specific legislative expression in which the parish priest and faithful were indicated as essential constitutive elements and the pastoral function of care of souls was regarded as the formal element—among such formulations the following definition might be stated: "parish is a fixed portion of the faithful entrusted to the spiritual care of a priest, who is its own rector."[2] Likewise, ecclesiological deepening carried out by the pontifical magisterium on the occasion of the so called *liturgical movement* in the first half of the twentieth century[3] overcame the *post-tridentina* concept of parish, in which the faithful were

1. Cf. F. COCCOPALMERIO, "Il significato del termine 'parrocchia' nella canonistica susseguente al Codice del 1917," in *La Scuola Catolica* 109 (1981), pp. 210–235, 497–531; D. SCHIAPPOLI-P.G. CARON, "Parrocchia," in *Novissimo Digesto Italiano*, XII (Turin 1982), pp. 449–464; A. LONGHITANO, "La parrocchia fra storia, teologia e diritto," in *La parrocchia e le sue strutture* (Bologna 1987), pp. 5–27.

2. E.F. REGATILLO, *Derecho parroquial* (Santander 1953), pp. 12–13. Cf. S. ALONSO, "Los párrocos en el Concilio de Trento y en el Código de Derecho Canónico," in *Revista Española de Derecho Canónico* 2 (1947), pp. 947–979; T. MAURO, "Parrocchia," in *Enciclopedia del Diritto*, XXXI (Milan 1981), pp. 868–887.

3. Cf. PIUS XII, Enc. *Mystici Corporis*, June 29, 1943, in *AAS* 35 (1943), pp. 193–248; idem, Enc. *Mediator Dei*, November 20, 1947, in *AAS* 39 (1947), pp. 521–595.

considered mere passive subjects of the activity of the parish priest.[4] The most significant features of the new ecclesiological approach in relation to the parish were subsequently expressed in the documents of Vatican Council II. Pursuant to the conciliar terminology, the parish is the principal *fidelium coetus*, so that the bishop, faced with the impossibility of presiding personally, always and in every part of his particular church, over every flock, must locally constitute under a pastor who substitutes for him to foster liturgical life, manifested "above all in the common celebration of the Sunday Mass" (*SC* 42). It is one of those *legitimae fidelium congregationes locales*, united to their pastors, in which by the celebration of the Holy Eucharist the "Church of Christ is really present," and "though they may often be small and poor, or existing in the diaspora, Christ is present through whose power and influence the One, Holy, Catholic and Apostolic Church is constituted" (*LG* 26).

It is a *determinata diocesis pars* in which the *animarum cura* is entrusted to the parish priest as pastor, under the authority of the bishop (cf. *CD* 30). It is, finally, *velut cellula dioecesis* that furnishes an *exemplum perspicuum apostolatus communitarii*, "for it gathers into a unity all the human diversities that are found there and inserts them into the universality of the Church" (*AA* 10).[5]

The reception in the Code of these inspiring principles is shown in a renewed juridical-canonical notion of parish, which coincides substantially with the definition offered by the recent Eastern Code: A parish is a definite community of the Christian faithful established on a stable basis in the eparchy, whose pastoral care in entrusted to a pastor" (c. 279 *CCEO*). The elements that configure the idea of parish in the Code are the following:

a) "*Certa communitas christifidelium.*" As was made clear in the genesis of the present canon, the community of the faithful is a personal, essential, and basic element of the idea of parish.[6] The expression *christifidelium communitas* was preferred by the codifying Commission, during the elaboration of the *Schema* of 1980,[7] before the expression *Populi Dei*

4. Cf. M. BOAROTTO, *La parrocchia fra pastorale e diritto in Italia* (Rome 1991), pp. 35–56.

5. Cf. F. COCCOPALMERIO, "Quaedam de conceptu paroeciae iuxta doctrinam Vaticani II," in *Periodica* 70 (1981), pp. 119–140; idem, "Il concetto di parrocchia," in *La parrocchia e le sue strutture*, cit., pp. 29–82 (pp. 58–72); B. DAVID, "Paroisses, curés et vicaires paroissiaux dans le Code de droit canonique," in *Nouvelle Revue Théologique* 107 (1985), pp. 853–866; A. BORRAS, "La notion de curé dans le Code de droit canonique," in *Revue de Droit Canonique* 37 (1987), pp. 215–236.

6. Cf. A. MARZOA, "El concepto de parroquia y el nombramiento de párroco (cuestiones en torno a los cc. 515 y 522)," in *Ius Canonicum* 29 (1989), pp. 449–465; C. BONICELLI, "La comunità parrocchiale," in *La parrocchia e le sue strutture*, cit., pp. 83–118; J.A. JANICKI, commentary on canon 515, in *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 416.

7. Cf. *Comm.* 13 (1981), pp. 147–148.

portio, reserved to the diocese (cf. c. 369). In this way, there stood out more "the dynamic interaction among persons united under the same pastor," for "the community aspect was more emphasized in the purview of the parish."[8] It is a well-defined community and the members who compose it must be clearly specified by the criterion of elected determination: personal criterion is allowed, though the territorial criterion predominates (cf. c. 518), which still does not form part of the notion of the parish (cf. c. 204§1). Only the faithful can be members of the parish. Nevertheless, catechumens can become part of the parish community (cf. c. 206), although, logically, in a non-plenary way and, therefore, not as true members.

b) "*Cuius cura pastoralis, sub auctoritate Episcopi dioecesani, committitur.*" Pastoral care, or likewise *cura animarum*, is the essential and formal element of the idea of parish. It is important to state that the pastoral care has been traditionally identified with the very essence of the parochial office,[9] constituting in the life of the Church the basic objective of division of the diocesan community into parishes.[10] The fundamental content of pastoral care, expressed in greater detail in cc. 519, 528–530, is the attentive care that souls be saved, shown in the preaching of the word of God and in the administration of the sacraments. It is a complete juridical duty for the parish priest that comes from a juridical fact: the act of commission by which pastoral care is entrusted to the parish priest. In every case, pastoral care of the parish is carried out under the authority of the diocesan bishop, apart from which no one can carry out in the diocese the pastoral care of the souls of the faithful of the parochial community (see commentaries on cc. 519, 528–530). We are, therefore, before a phenomenon of decentralization in the function of the care of souls, of a substantially pastoral content. The parish is not a structure of governance in the strict sense; but, rather, a pastoral structure, a privileged purview of ordinary pastoral care.

c) "*Parocho, qua proprio eiusdem pastori.*" The parish priest, the essential personal element of the community of the faithful who is established in the parish, is the priest (cf. cc. 150, 521 § 1) who has been appointed to the parochial office. Only one who has received the order of the presbyterate guarantees the sacramental presence of Jesus Christ in the midst of the Christian people, by virtue of sacred orders that identifies one with Christ the Head and capacitates one for the celebration of the Holy Eucharist, the theological reality upon which the parochial community is founded as a *communitas eucharistica* (cf. *CL* 26). Constituted by the ordained ministry and the other faithful, the parish is an organic community,

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8. Ibid.

9. Cf. A. ROUCO-VARELA, "La parroquia en la Iglesia. Evolución histórica, momento actual, perspectivas de futuro," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), p. 24; T. MAURO, "Parrocchia," cit., pp. 870–872.

10. Cf. A. VITALE, "Parrocchie e parroci," in *Enciclopedia giuridica*, XXII (Rome 1990), pp. 1–5.

in which "the pastor, who represents the diocesan bishop,is the hierarchical bond with the entire particular church" (*CL* 26). (Regarding the expression proper pastor as applied to the parish priest, and the normal forms of collaboration of the other faithful in the pastoral function of the parish priest, # see commentary on c. 519).

d) *"Stabiliter constituta in Ecclesia particulari."* The parish must be "constituted in a stable manner" through erection by the diocesan bishop (cf. § 2). It is an act of a constitutive nature that forms the community of the faithful and configures it as a parochial community. It does not deal with, therefore, a community *simpliciter* or an association of faithful.[11] Likewise, parishes, in fact, cannot occur in the Church. As the text states, the parish is integrated *into the particular Church*. In principle, this expression seems to mean that it should be understood not so much in its theological fundamental sense as in the juridical instrumental sense, which the Code utilizes frequently;[12] that is, to refer to the *portiones Populi Dei*, which constitute larger ecclesiastical circumscriptions, and in whose heart parishes can be established.[13] Such is, in the purview of the Latin Church, the diocese or other jurisdictional structures of similar characteristics,[14] or, in the purview of the Eastern Churches, the eparchy or other similar structures.[15] Therefore, though having certain autonomy, reinforced by the canonical instrument of the juridical personality (cf. § 3), the parish is always a part of a broader ecclesiastical organizational structure.[16] So independent parishes cannot exist. Analogously, c. 374 § 1 establishes that the broadest pastoral structures must, at the same time, be divided into different parts or parishes. All in all, the act of erection confers on the parochial community the character of a public organizational structure of the particular church.

2. Paragraph 2 establishes the exclusive competence of the diocesan bishop for the erection, suppression, or modification of the parishes. They are acts that the bishop realizes "with his own authority" (*CD* 32), likewise when referring to personal parishes (cf. c. 518) previously reserved to the Apostolic See (cf. c. 216 § 4 *CIC*/1917).[17] Nevertheless, in case there are agreements between the Apostolic See and the civil governments, or acquired rights by other physical or moral persons, it is important to have in mind the criterion established by Paul VI in 1966 for these cases (*ES* I, 21

11. Cf. A. BORRAS, "La notion de curé dans le Code...," cit., p. 228
12. Cf. J. HERVADA, *Diritto Costituzionale Canonico* (Milan 1989), p. 299.
13. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 456.
14. Cf. c. 368. Also cf. *SMC*, 1; *Communionis notio*, 10 and 16.
15. Cf. *CCEO*, cc. 177 §1, 279, 311, 313. Also cf. SCEC, *Decl. interpretative du Decr. du 27 Juillet 1954*, April 30, 1986, III, no. 4, in *AAS* 78 (1986), pp. 784-786.
16. Cf. A. VITALE, "Parrocchie e parroci," cit., p. 2.
17. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 20.

§ 3); a criterion that, in the absence of a prior contrary regulation, can be considered valid. The resolution of the matter is thereby entrusted to the bilateral agreement of the interested parties and the competent authority. The Pontifical Commission for the interpretation of the Code indicated in a response in 1969,[18] who must be heard in each case by competent authority. That includes the Holy See through the Council for Public Affairs, now the Second Section of the Secretary of State (cf. *PB* 47) in the case of agreements between the Holy See and civil governments, and in other cases the bishop, or the Holy See through the competent dicastery, which is presently the Congregation for the Clergy (cf. *PB* 99).

On the other hand, pursuant to cc. 48 and 51, the erection, suppression, or modification of the parishes must be made formal through a written decree, customarily published in the Bulletin of the diocese. The following must be clearly stated in the decree: the reasons for the erection, the criterion for determination of the community of the faithful (e.g., by indicating the territorial boundaries and, possibly, the new territorial boundaries of the affected parishes), the see of the parish church, the manner of establishing the office of parish priest, by what means such a person will be sustained and how the expenses of worship will be handled, as well as the effective date of the decree. For erection and suppression of parishes the bishop must consult the council of priests (cf. cc. 495–501). Likewise, in the case of modifications that notably change the configuration of the parish fall into different situations.[19] They may affect the determination of the community of the faithful, (e.g., a change in the territorial boundaries), or an introduction of elements that significantly modify pastoral services (e.g., the substitution of the parish church, entrusting a parish to a clerical religious institute, conferral of pastoral care *in solidum* to several priests, etc.). Even though the positive opinion of the council of priests is not binding, given the importance of these acts for the life of the diocese, it is provided that the bishop request their opinion as an obligatory prudent measure, whose omission, pursuant to c. 127 § 2,2°, would cause the act to be null.[20] Regarding the criteria to follow for the erection of the parishes, since pastoral aspects are treated more than juridical ones, the Code says nothing. As the Directory *Ecclesia imago* advised, it can be useful to constitute a diocesan commission with the task of studying, together with the council of priests, the questions referring to the erection of new parishes (*DPMB* 176–178).

3. Paragraph 3 established the juridical personality of the lawfully erected parish; in contrast to the *CIC*/1917, which was limited to recognizing the non-collegial moral personality of the church or parochial benefice

18. Cf. PCIDSVC, *Responsum ad propositum dubium*, July 3, 1969, in *AAS* 61 (1969), p. 551.
19. Cf. L. DE ECHEVERRÍA, commentary on canon 515, in *Salamanca Com.*
20. Cf. R. PAGÉ, *Les Églises particulières*, II, cit., p. 23.

(cf. cc. 99 and 1409 *CIC*/1917).[21] Pursuant to c. 116 § 2 and the provisions of this paragraph, the parish has a public juridical personality *ipso iure*, not by grant of the bishop. It seems clear, given the inclusion of the canon itself, that the titular subject of the juridical personality is in the complex reality defined in § 1, and erected in conformance with the provisions of § 2: that is, the parish, or the *parochial community*, since it is a public organizational structure of the particular church.[22] It is not the mere community of the faithful. It is a juridical person of an institutional, not collegial, character: cf. c. 115 § 2. Nor is it the parish priest, who is only its legal representative (cf. c. 532).[23] Therefore, in canon law, the rights and obligations "which accord with its nature" are attributed to the parish (c. 113 § 2): that is, the specific rights and obligations of its pastoral purpose, and those that derive from the use of the patrimonial assets which are destined to that end. To guarantee validity of the patrimonial acts of the parish under civil law, it will be important that the parish avail itself of civil juridical personality as well, under public law when possible, by means of the current methods of each country.[24]

In Spain, by virtue of art. I, 2 of the Agreement regarding juridical matters between the Holy See and the Spanish State, of January 3, 1979, a parish "shall have a civil juridical personality as a long as it has canonical juridical personality and notice of same is provided to the competent organs of the State."

21. Cf. F. COCCOPALMERIO, "De paroeciae personalitate iuridica a Codice 1917 usque ad Codicem 1983," in *Periodica* 74 (1985), pp. 325–388.
22. Cf. J. CALVO, commentary on c. 515, in *Pamplona Com.*
23. Cf. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 37–38; F. COCCOPALMERIO, *De paroecia* (Rome 1991), pp. 32–49.
24. Cf. J. DE OTADUY, "La personalidad civil de las entidades organizativas de la Iglesia (referencia particular a la parroquia)," in *Ius Canonicum* 29 (1989), pp. 503–526.

516 **§ 1. Nisi aliud iure caveatur, paroeciae aequiparatur quasi-paroecia, quae est certa in Ecclesia particulari communitas christifidelium, sacerdoti uti pastori proprio commissa, ob peculiaria adiuncta in paroeciam nondum erecta.**

§ 2. Ubi quaedam communitates in paroeciam vel quasi-paroeciam erigi non possint, Episcopus dioecesanus alio modo earundem pastorali curae prospiciat.

§ 1. Unless the law provides otherwise, a quasi-parish is equivalent to a parish. A quasi-parish is a certain community of Christ's faithful within a particular church, entrusted to a priest as its proper pastor, but because of special circumstances not yet established as a parish.

§ 2. Where some communities cannot be established as parishes or quasi-parishes, the diocesan bishop is to provide for their spiritual care in some other way.

SOURCES: § 1: c. 216 § 3; scc Decl., 1 aug. 1919 (*AAS* 11 [1919] 346–347); SCPF Instr. *Cum e pluribus*, 25 iul. 1920 (*AAS* 12 [1920] 331–333); SCPF Decr. *Ordinarii quarumdam*, 9 dec. 1920 (*AAS* 13 [1921] 17–18)
§ 2: *DPMB* 174, 183; *EN* 58

CROSS REFERENCES: § 1: cc. 371, 515
§ 2: cc. 383 § 1, 530, 568

COMMENTARY

Antonio S. Sánchez-Gil

1. The solicitude of the Church for the salvation of all souls involves, in the juridical-canonical field, the establishment of pastoral structures that put within the reach of all the groups of faithful, regardless of their circumstances of life, ordinary pastoral care in a manner suited to their circumstances. This need, experienced on both the universal and particular level, was the object of the attention of the conciliar decrees. Thus a "special concern should be shown for those members of the faithful who, on account of their way of life, are not adequately cared for by the ordinary pastoral ministry of the parochial clergy or are entirely deprived of it" (*CD* 18). In addition, the importance of establishing "special pastoral projects for the benefit of different social groups" (*PO* 10), has implied on the occasion of the *CIC*, the renewal of several traditional pastoral struc-

tures, the creation of other new ones, and the modification of the meaning of others.[1] This is the case in c. 516 that, in its apparent simplicity, presents several innovative elements reflecting this tendency.

The drafting of the present canon, while confirming the primacy of the parish as the habitual and ordinary method of structuring the communities of faithful in the particular church, shows that it is not always possible to erect them in parochial communities. In some cases, contemplated in § 1, because of the existence of particular circumstances that hinder their direct erection as parishes; and, in the cases referred to by § 2, when,for different reasons, a community of the faithful cannot be structured for its pastoral servicing according to ordinary schemes. In any case, before examining its specific content, it is important to consider briefly the complex evolution of the canon in the codifying Commission.

2. In the *Schema* of 1977, c. 352 § 2, forerunner to the present c 516, the *perpetual vicar* or curate was referred to and established its equivalence to the parish priest.[2] Later, the *coetus* "De Populo Dei," in the session of April 19, 1980, it was decided to remit the content of § 2, to where the parochial vicariate was dealt with.[3] In the session of May 14, 1980, the prepared text was debated, whose § 1 dealt no longer with the perpetual vicariate, but with the *parochial vicariate* (as an equivalent figure to the parish) and § 2. Regarding the *quasi-parish*, understood as another way of forming communities of faithful when it is not possible to form parishes. The secretary and the relator affirmed that it was a question of two identical issues and it would be advisable to reserve the name of *quasi-parish* for the missionary territories; nevertheless, the consultor that had prepared the text defended the importance of maintaining the distinction, for § 2 would be an application of § 1 in a missionary territory.[4] Finally, it was decided to move the term *quasi-parish* to § 1, as an equivalent figure to the parish but without the reference to missionary territories, and to contemplate in § 2 the possibility that the diocesan bishop provide by *other means* pastoral care to those communities that cannot be erected as parishes or quasi-parishes.[5] It is important to state how, from the consideration of two ecclesiastical offices, the vicar curate and the quasi-parish priest, aremade equivalent by the prior Code; and also how the parish priest (cf. c. 451 § 2,1°–2° *CIC*/1917) went on to contemplate only one institutional figure (the quasi-parish) juridically equivalent in law to the parish.

3. Paragraph 1 contains, therefore, a new juridical-canonical notion of the quasi-parish, whose elements substantially coincided with those al-

1. Cf. J.M. PASSICOS, "Le diocèse et la paroisse. La théologie renouvelée, structures nouvelles, pour d'autres besoins pastoraux," in *L'Année canonique* 27 (1983), pp. 121–130.
2. Cf. *Comm.* 13 (1981), p. 150.
3. Cf. ibid.
4. Cf. *Comm.* 13 (1981), pp. 304–305.
5. Cf. ibid.

ready examined in the notion of parish (see commentary on c. 515 § 1). The quasi-parish is also a certain community of the faithful within the particular church, and not only in the apostolic vicariates and prefectures dependent on the SCPF, as it originally had been (cf. c. 216 §§ 2–3 *CIC*/1917).[6] Its pastoral care is entrusted to a priest as *proper pastor* (see commentary on c. 519), who is not called parish priest but simply *priest*, although perhaps it would have been more precise to speak of *quasi-parish priest*. Like the parish, it must be erected by the decree of the diocesan bishop; nevertheless, and this is the essential factor that distinguishes it, *because of special circumstances* it has yet (*nondum*) to be erected as a parish. Therefore, it does not have its own stability as a parish, but it is a provisional or *temporary* organizational structure, in the process of being erected as a parish.[7] Because of this the quasi-parish becomes a parish in the formation phase. Nothing is said regarding the nature of the particular circumstances that hinder erection as a parish; although it seems logical that it would deal with particularities relevant to the nature of the quasi-parish: particularities, namely, not of definitive circumstances but rather of temporary ones and, in principle, prior to possible erection; not circumstances coming from a parish already erected which receive a different treatment in the Code: for example, the lack of priests to serve already existing parishes (cf. c. 517). *Intrinsic* circumstances can be distinguished in the same community of the faithful (e.g. barely stable social groups: emigrants, nomads, or fugitives, lack of a permanent priest, lack of sufficient material means, etc.); and *extrinsic* circumstances (e.g., opposition by the civil authorities to the creation of new parishes).[8] However, it seems logical to suppose that those circumstances that would affect, even provisionally, the essential elements of the quasi-parish (e.g., the lack of a fixed community of the faithful, in the absence of territorial or precise personal boundaries; the lack of a priest who can take charge of pastoral care; etc.) would hinder not only erection as a parish but also as a quasi-parish.

As it is established at the beginning of § 1, the quasi-parish, as a public organizational structure of the particular church, is equivalent in law to a parish. Nevertheless, the expression that introduces this statement deserves special attention: "nisi aliud iure caveatur," which can lead to different interpretations.[9] Keeping in mind the customary meaning of the juridical figure of the "equivalence in law,"[10] it seems that the most secure

6. Cf. SCPF, Instr. *Cum e pluribus*, July 25, 1920, in *AAS* 12 (1920), pp. 331–333; ID., Decr. *Ordinarii quarumdam*, December 9, 1920, in *AAS* 13 (1921), pp. 17–18.

7. Cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 16; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 27.

8. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 55.

9. Cf. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 40–42; F. COCCOPALMERIO, *De paroecia*, cit., pp. 55–56.

10. Cf. C.J. ERRÁZURIZ, "Circa l'equiparazione quale uso dell'analogia in diritto canonico," in *Ius Ecclesiae* 4 (1992), pp. 215–224.

interpretation would consist in applying all the norms regarding the parish to the quasi-parish. In addition, all the norms regarding the office of the parish priest to the office of the priest in charge of the quasi-parish, as long as they are in conformance with the nature of the quasi-parish—and with the way in which it has been entrusted to the priest. That is unless the law (universal or particular, legal or customary, or the very decree of erection) expressly states otherwise. It does not seem, however, that this expression can refer to equivalence itself, leading to quasi-parishes not equivalent to parishes; or the essential configuring elements, giving rise to quasi-parishes with an indeterminate community of the faithful or without a pastor or its own. Therefore, it is important that the decree of erection clearly state the special circumstances that imply non-constitution as a parish, as well as the possible limitations of applying the norms regarding parishes and parish-priests:[11] for example, the possible limitations on the stability of the priest (cf. c. 522), and the possible non-obligatory nature of constituting the finance committee (cf. c. 537); etc.

4. Paragraph 2 establishes the diocesan bishop's obligation to provide otherwise (*alio modo*) for the pastoral care of the communities that cannot be erected as parishes or quasi-parishes. Several authors have interpreted this provision as a means of specifying a recommendation that the very Code directs to the diocesan bishop: "to show an apostolic spirit also to those who, because of their condition of life, are not sufficiently able to benefit from ordinary pastoral care" (c. 383 § 1),[12] for, as John Paul II has said, "there exist in the areas of culture, society, education, professions, etc. many other ways for spreading the faith and other settings for the apostolate which cannot have the parish as their center and origin" (*CL* 26). Nevertheless, the context of § 2 and the reference to a pastoral care without greater specifications make us think about communities that cannot be structured as parochial communities but which, for the most part, call for an ordinary pastoral care, with a content similar to what is received in the parish and quasi-parish. It is left to the diocesan bishop to evaluate the circumstances that hinder the erection of those communities according to traditional schemes, and to determine the most suitable way to accomplish pastoral care in such circumstances. Several authors consider that § 2, refers to communities customarily made up of one or several parochial circumscriptions, but that "cannot be properly attended to because of the distance from the center of the parish or because of its large membership, or for its particular set of problems."[13] The communities not incorporated into parishes already established would only be susceptible to the recourse of § 1, through its erection as a quasi-parish.[14]

11. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), pp. 463–464.
12. Cf., e.g., J.C. PÉRISSET, *La Paroisse...*, cit., pp. 42–43. Also cf. c. 771 §1.
13. M. MORGANTE, *La parrocchia nel Codice...*, cit., p. 17.
14. Cf. F. COCCOPALMERIO, *De paroecia*, cit., pp. 59–60.

Nonetheless, the lack of special specifications in the text seem to leave to the assessment of the bishop not only the choice of the manner to conduct pastoral care but also the determination of the group of faithful that will constitute the community that is intended to be served. Therefore, the community could continue forming part of one or several parochial communities or, likewise, constitute a different group (territorially or personally) and separate from the others.[15] In any case, if one or several parishes were to be notably affected, it will be necessary for the bishop to seek the opinion of the council of priests before providing pastoral care to that group of faithful (see commentary on c. 515 § 2).

5. Regarding the possible methods of pastoral service, in principle, it would include the recourse to other figures contemplated in the Code itself: to constitute assistant parish priests for specific groups of faithful of one or several parishes (cf. c. 545 § 2); confer "even parochial functions" on the rector of the church (cf. c. 560); to constitute chaplains for emigrants, exiles, etc. (cf. c. 568); to give permission to establish oratories for a community or group of faithful (cf. c. 1223) or private chapels for the benefit of several faithful (cf. c. 1226).[16] It would also be appropriate to preserve as structures of particular law figures that were contained in the Code: for example, perpetual vicariates (cf. c. 451 § 2,2° *CIC*/1917), traditional in some German dioceses.[17] Finally, the creation of new structures, more or less stable, of various kinds would be appropriate: thus, to establish centers of apostolate like the missions with care of souls or the pastoral centers, to which refer *DPMB*, 174 and 183; or to grant appropriate permission for the constitution of founding communities that are in conformance with the criteria of ecclesiality established in *Evangelii nuntiandi* 58. In the case of new structures created by particular law, it is important that the diocesan bishop state clearly what pastoral functions will be carried out by the priests in charge of pastoral service: in principle, the functions proper to ordinary pastoral care and their relationship with the interested parishes. In this sense, pursuant to c. 530, it seems important that those pastoral functions that imply changes in the state of a person, as are the administration of baptism and presence at the celebration of matrimony, be done according to the wishes of the parish priest (see commentary on c. 530).

15. Cf. J.C. PÉRISSET, *La Paroisse...*, cit., pp. 42–43.
16. Cf. A. SOUSA-COSTA, "Commenti ai canoni 460–572," in *Commento al Codice di Diritto Canonico* (Rome 1985), pp. 270–341 (p. 311).
17. Cf. H. HACK, "Die Pfarrei," in *Handbuch des katholischen Kirchenrechts* 43 (1983), pp. 384–395.

517 **§ 1. Ubi adiuncta id requirant, paroeciae aut diversarum simul paroeciarum cura pastoralis committi potest pluribus in solidum sacerdotibus, ea tamen lege, ut eorundem unus curae pastoralis exercendae sit moderator, qui nempe actionem coniunctam dirigat atque de eadem coram Episcopo respondeat.**

§ 2. Si ob sacerdotum penuriam Episcopus dioecesanus aestimaverit participationem in exercitio curae pastoralis paroeciae concredendam esse diacono aliive personae sacerdotali charactere non insignitae aut personarum communitati, sacerdotem constituat aliquem qui, potestatibus et facultatibus parochi instructus, curam pastoralem moderetur.

§ 1. Where circumstances so require, the pastoral care of a parish, or of a number of parishes together, can be entrusted to several priests jointly, but with the stipulation that one of the priests is to be the moderator of the pastoral care to be exercised. This moderator is to direct the joint action and to be responsible for it to the bishop.

§ 2. If, because of a shortage of priests, the diocesan bishop has judged that a deacon, or some other person who is not a priest, or a community of persons, should be entrusted with a share in the exercise of the pastoral care of a parish, he is to appoint some priest who, with the powers and faculties of a parish priest, will direct the pastoral care.

SOURCES: § 1: c. 460 § 2; CodCom Resp. IV, 11 iul. 1922 (*AAS* 14 [1922] 527)
§ 2: SCEP Instr. *La fonction évangélisatrice*, 19 nov. 1976, V

CROSS REFERENCES: § 1: cc. 520 § 1, 526, 542–544
§ 2: cc. 230 § 3, 228 § 1, 521

COMMENTARY

Antonio S. Sánchez-Gil

The need to adapt the methods of pastoral service to the circumstances of each time represents a constant in the history of canon law. In our time, and especially after Vatican Council II, numerous dioceses have been presented with problems of various kinds related to the pastoral care of the parishes. On one hand there is a growing shortage of priests, and,

on the other there exist very populous parishes in urban areas,[1] and also widely separated parishes with few members in rural areas. At the same time, it has been considered opportune to foster communal life among priests (cf. *CD* 30), and to favor a greater co-responsibility among priests entrusted with the pastoral care of one or several parishes, according to the experiences of many dioceses before the promulgation of the Code.[2]

Where there has been a shortage of priests, it has been necessary to establish new means of collaboration with the faithful who have not received the sacrament of orders as priest (cf. *AA* 24). For these reasons, though lacking precise conciliar directions to confront the situation that the lack of priests is creating, it was considered important, in the preparatory phase of the *CIC*, to introduce into the universal law of the Church two significant innovations that, without affecting the other elements that compose the parochial community, are referred to as the office holder of the pastoral care of a parish.[3] Thus, c. 517 contemplates two new methods of entrusting the pastoral care of a parish.

1. Paragraph 1 establishes the possibility of entrusting *in solidum* the pastoral care of one or more parishes to several priests, when the circumstances require it and a very precise condition is also met: that one of the priests be the moderator of pastoral care, direct the joint activity, and be responsible for it to the bishop. Although there is no lack of historical precedents (see commentary on c. 526), the parochial ministry entrusted *in solidum* to several priests, stated in this paragraph and regulated in greater detail in cc. 542–544, constitutes a new figure in contemporary canon law.[4]

Starting from its juridical-canonical regulation, which is not exempt from some uncertainty (see commentary on cc. 542–544), it can be stated that what characterizes the formula *in solidum* is that the pastoral care of one or several parishes is entrusted *pro indiviso* to several priests so that they jointly carry it out under the direction of one of their number, called the moderator. Therefore, a single parochial office, with content similar to those of the office of a parish priest, but not strictly identical, is entrusted to an office holder that is always multiple.[5] Even in the cases in which the

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1. Cf. P. COLOMBO, "Le grandi parrocchie in aree metropolitane," in *Orientamenti pastorali* 32 (1984), pp. 19–64.
2. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), pp. 3–83 (p. 38); L. DE ECHEVERRÍA, commentary on c. 517, in *Salamanca Com.*
3. Cf. *Comm.* 8 (1976), p. 24.
4. Cf. A. BORRÁS, "La notion de curé dans le Code de droit canonique," in *Revue de Droit Canonique* 37 (1987), p. 232.
5. Cf. J. MIRAS, "El ejercicio 'in solidum' del ministerio parroquial," in *Ius Canonicum* 29 (1989), pp. 483–502; idem, "El ministerio parroquial confiado 'in solidum' a varios sacerdotes," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), pp. 97–115; A. VIANA, "El párroco, pastor propio de la parroquia," in *Ius Canonicum* 29 (1989), pp. 475–478.

pastoral care of various parishes is entrusted to someone, a situation that could be thought of as a plurality of parochial offices (see commentary on c. 526). The juridical nature of the parochial ministry entrusted *in solidum* consists precisely in that the pastoral care of one or several parishes. This may be considered as a single pastoral task, and is entrusted to several priests at the same time so that they co-responsibly exercise their function by joint effort.[6] Consequently, each priest receives *identical participation* in the entrusted office and can perform the functions that are attributed to a parish priest (c. 543 § 1).[7] Nevertheless, none of them receives, in the words of the lawmakers or in the Code, the name of parish priest, nor does it so appear in the strict sense (see commentary on c. 526). Although there may not be any lack of writers who, considering all of them as true parishes, might prefer to speak of *joint parish priests*[8] or *co-parish priests* ("co-curés")[9] or attribute to the moderator the character of *pastor proprius* and refer to the other priests of the group as *co-parish priests* ("Mit-Pfarrer").[10] Nevertheless, although the moderator certainly holds a particular and predominant position in the group, he is not the "parish priest" upon whom the others depend as though they were "assistants." As the codifying Commission stated, the moderator, who is *primus inter pares*,[11] directs the joint action and is responsible for it to the bishop. In this sense, it was formerly said that the parochial office conferred *in solidum* has a similar content to that of the office of parish priest, but not identified with it, for the juridical condition of parish priest is not conferred *stricto sensu* to its holders. Neither does it seem that the *coetus* of priests can be considered as a parish priest, as one sector of the doctrine states.[12] In fact, the relator of the text considered it opportune to insist on the lack of personality (moral or juridical) of the group of priests,[13] and the Code itself seems to expressly exclude said interpretation (cf. c. 520 § 1). All in all, pursuant to c. 543 § 1, all the priests of the

6. Cf. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 185–189; idem, "De applicatione conceptus 'in solidum' ad novam figuram officii parochi," in *Periodica* 73 (1984), pp. 191–202; D. GARCÍA-HERVÁS *Régimen jurídico de la colegialidad en el Código de Derecho Canónico* (Santiago de Compostela 1990), pp. 38–49.

7. Cf. A. BORRAS, "La notion de curé dans le Code...," cit., pp. 235–236.

8. Cf. J.M. DÍAZ-MORENO, "Párroco," in *Diccionario de Derecho Canónico* (Madrid 1989), p. 440.

9. Cf. B. DAVID, "Paroisses, curés et vicaires paroissiaux dans le Code de droit canonique," in *Nouvelle Revue Théologique* 107 (1985), p. 858.

10. Cf. H. PAARHAMMER, in *Münsterischer Kommentar zum CIC*, 517, 2; H. SCHMITZ, "Pfarrer und Gemeinde," in *Archiv für katolisches Kirchenrecht* 148 (1979), pp. 48–71.

11. Cf. *Comm.* 14 (1982), p. 222.

12. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 102; M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 168.

13. Cf. *Comm.* 8 (1976), pp. 29–30. Also cf. D. MOGAVERO, "Il parroco e i sacerdoti collaboratori," in *La parrocchia e le sue strutture* (Bologna 1987), pp. 119–146 (p. 125).

group are juridically equivalent in law to a parish priest, but not in the strict sense.[14]

The rather exceptional recourse that should be given to this figure flows from the expression "ubi adiuncta id requirant" that introduces the text of § 1.[15] Therefore, a situation of mere convenience (the term *suadeant*, utilized by the Code for situations of this kind is not employed: cf. e.g., cc. 473 § 3, 475 § 2, and 511) would not be sufficient, but what is required (with the term *requirant*, reserved for cases that imply a certain need: cf. e.g., c. 476) is a situation caused by circumstance that hinders or makes considerably difficult pastoral care through formulas customarily contained in cc. 515 and 545.[16] Moreover, it can be a situation occasioned by more or less permanent circumstances or, more probably, by provisional and temporary circumstances. From the genesis of the text it could be concluded that it deals with circumstances customarily related to the lack of priests.[17] In fact, to confer pastoral care *in solidum* can be particularly useful to resolve the situation of those dioceses where few priests must distribute their time to attend to various jobs, and only by appropriately coordinating their schedules can all the pastoral work be accomplished in one or several parishes.[18] Nevertheless, the formula *in solidum* can also be suitable to resolve another kind of situation not directly occasioned by the scarcity of priests; especially, as previously stated, to facilitate the service to over-populated parishes in large cities, or of several distant and sparsely populated rural parishes, by permitting that all the priests entrusted with pastoral care can have an immediate relationship with the faithful and have the attributions of a parish priest. On the other hand, it is appropriate to view this formula as a way of promoting co-responsibility in the exercise of pastoral action and to foster communal life among the priests. Nevertheless, it should not be forgotten that the importance of facilitating communal life among priests and obtaining a greater unity of pastoral action are postulates that are equally valid everywhere,[19] and can also be resolved with other ordinary measures (cf. cc. 533 § 1 and 550 §§ 1–2), without an exclusive recourse to the formula *in solidum* being necessary in these cases.

Regarding the appointment and lapse of the priests in the group and the characteristics of joint action, see commentary on cc. 542–544.

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14. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), pp. 30–31 and 150.
15. Cf. *Comm.* 8 (1976), p. 23; 14 (1982), p. 221.
16. Cf. J.C. PÉRISSET, *La Paroisse...*, cit., p. 184; P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), pp. 459–460.
17. Cf. *Comm.* 8 (1976), p. 24.
18. Cf. J. MIRAS, "El ejercicio 'in solidum'...," cit., pp. 496–497.
19. Cf. ibid.

2. Paragraph 2 contemplates those situations in which, due to a shortage of priests, the diocesan bishop finds it necessary to entrust a share of the pastoral care of the parish to a deacon or someone else who has not received the status of priest, or to a community of persons. In these cases, universal law establishes that the diocesan bishop must always designate a priest who, invested with the faculties of the parish priest, shall direct the pastoral activity. Therefore, it is the basic regulation of a special form of collaboration of some of the faithful who have not received the status of priest (deacons, religious or religious and lay faithful) in the ministry of the parish, which must be adopted in order to handle situations always connected with a shortage of priests. This method is therefore differentiated from other normal forms of collaboration or of assistance from the parish faithful in the parish ministry, referred to in c. 519, *in fine* (see commentary).[20]

Recently, some of the issues raised in the area of collaboration by the faithful who have not received the status of priest, particularly the lay faithful in the sacred ministry of the priests, have been the subject of an *Instruction* signed by several Dicasteries of the Holy See.[21] This document seeks, among other things, "to give a clear and authorized answer" to the problems raised by the "new forms of 'pastoral' activity of the non-ordained faithful in the sphere of the parishes and of the dioceses" (*EdM, Premiss*). It attempts to formulate some criteria for interpreting the current norm regarding the various forms of collaboration that can be adopted, depending on whether circumstances demand a normal or special character. The fact that this Instruction devotes one of its *Practical provisions* precisely to collaboration within the parish, with an express reference to the situation we are discussing, makes it necessary to cite it in full:

"The non-ordained faithful, as happens in many worthy cases, may collaborate effectively in the pastoral ministry of clerics in parishes, health care centres, charitable and educational institutions, prisons, Military Ordinariates, etc. Provisions regulating such extraordinary form of collaboration are provided by Canon 517, § 2.

"§ 1. The right understanding and application of this canon, according to which "si ob sacerdotum penuriam Episcopus dioecesanus aestimaverit participationem in exercitio curae pastoralis paroeciae concredendam esse diacono aliive personae sacerdotali charactere non insignite aut personarum communitati, sacerdotem constitat aliquem qui,

20. Cf. A.S. SÁNCHEZ-GIL, "L'apporto dei fedeli laici all'esercizio della cura pastorale della comunità parrocchiale," in *Metodo, Fonti e Soggetti del Diritto Canonico*, Ed. J.I. Arrieta and G.P. Milano (Vatican City 1999), pp. 1131–1156.

21. Cf. *CC, Instruction "Ecclesiae de mysterio"on certain questions regarding the collaboration of the non-ordained faithful in the sacred ministry of priest,* August 15, 1997, in *AAS* 89 (1997), pp. 852–877.

potestatibus facultatibus parochi instructus curam pastoralem moderetur," requires that this exceptional provision be used only with strict adherence to conditions contained in it. These are:

"a) *ob sacerdotum penuriam* and not for reasons of convenience or ambiguous 'advancement of the laity';

"b) This is participation *in exercitio curae pastoralis* and not directing, coordinating, moderating or governing the Parish; these competencies, according to the canon, pertain to the priest alone.

"c) Because these are exceptional cases, before employing them, other possibilities should be availed of, such as using the services of retired priests still capable of such service, or entrusting several parishes to one priest or to a *coetus sacerdotum*." [Footnote 75: Cf. C.*I.C.*, can. 517, § 1] "In any event, the preference which this canon gives to deacons cannot be overlooked. The same canon, however, reaffirms that these forms of participation in the pastoral care of parishes cannot, in any way, replace the office of Parish Priest."

The same canon decrees that: "Episcopus dioecesanus ... sacerdotem constituat aliquem qui potestatibus et facultatibus parochi instructus, curam pastoralem moderetur." Indeed, the office of Parish Priest can be assigned validly only to a priest (cf. Canon 521, § 1) "even in cases where there is a shortage of clergy." [Footnote 76: The non-ordained faithful or a group of them entrusted with a collaboration in the exercise of pastoral care can not be given the title of "community leader" or any other expression indicating the same idea.]

As stated in § 2, "In the same regard, it must be noted that the Parish Priest is the Pastor proper to the parish entrusted to him," [footnote 77: Cf. *C.I.C.*, can. 519] "and remains such until his pastoral office shall have ceased." [Footnote 78: Cf. ibid., can. 538, §§ 1–2.]

It continues: "The presentation of resignation at the age of 75 by a Parish Priest does not of itself (ipso iure) terminate his pastoral office. Such takes effect only when the diocesan bishop, following prudent consideration of all the circumstances, shall have definitively accepted his resignation in accordance with Canon 538, § 3 and communicated such to him in writing." [Footnote 79: Cf. ibid., can. 186.] In the light of those situations where scarcity of priests exists, the use of special prudence in this matter would be judicious.

"In view of the right of every cleric to exercise the ministry proper to him, and in the absence of any grave health or disciplinary reasons, it should be noted that having reached the age of 75 does not constitute a binding reason for the diocesan bishop to accept a Parish Priest's resignation. This also serves to avoid a functional concept of the Sacred Ministry." [Footnote 80: Cf. Congregation for the Clergy, Directory for the Life

and Ministry of Priests *Tota Ecclesia* (31 January 1994), n. 44] (*EdM*, art. 4).

This Article 4, which does not seek to amend the regulation contained in § 2 of this canon, is an authentic interpretation made *per modum legis* (see commentary on c. 16), and it revokes the contrary norms of particular law. As is known, this document has the characteristic of a general decree, approved specifically by the Supreme Pontiff, and it expressly declares revoked,"all particular laws, customs and faculties conceded by the Holy See *ad experimentum* or other ecclesiastical authorities which are contrary to the foregoing norms" (*EdM*, *Conclusion*).

Bearing in mind the new interpretative criteria, it is possible to indicate some juridical aspects of the wording of § 2, indicating the differences with the wording *in solidum* of § 1.

In the first place, it should be noted that the text of § 2 does not contain the expression *in solidum* of § 1, and therefore it does not seem appropriate to apply said terminology to these situations, as did the *CCC*, before the elimination of said expression in the Latin version *typica* (cf. *CCC*, 911), and as we had adopted in the previous edition of these commentaries. On that occasion we thought that it could be said that in these cases, analogous to the case contemplated in § 1, a *sole parish task or office* is entrusted with content similar to those of the office of the parish priest, but not exactly identical to an always multiple holder. With the difference, we were then indicating that in this case each holder receives a different share in the office entrusted:[22] upon the presbyter designated to direct the pastoral activity and endowed with the faculties of the parish priest devolves those functions of the pastoral care that are exclusive to the priest; while those who have not received the order of the presbyter may participate secondarily in the exercise of the other functions of pastoral care.[23]

We also stated that none of them receives the denomination of parish priest and is not such in the strict sense.[24] They are not such in any case, nor can they be denominated as such: "The non-ordained faithful or a group of them entrusted with a collaboration in the exercise of pastoral care can not be given the title of 'community leader' or any other expression indicating the same idea." (*EdM*, art. 4, footnote 76; cf. c. 521, see commentary).

Nevertheless, even if the sense of what we then stated can be maintained with regard to the tenor of the Instruction, which considers the wording of § 2 to be "an extraordinary form of collaboration" in which the faithful who have not received the status of priest receive a "share in the

22. Cf. A BORRAS, "La notion de curé dans le Code...," cit., pp. 235–236.
23. Cf. P. URSO, "La struttura interna delle Chiese particolari," cit., p. 463.
24. Cf. R. PAGÉ, *Les Églises particuliéres*, II, cit., pp. 37–45.

exercise of pastoral care," and which expressly declares that:"these forms of participation in the care of the parishes cannot in any way be identified with the office of parish priest" (Art. 4 § 1). Therefore, it seems preferable, because it is more appropriate from the theological point of view and more juridically precise, to consider that the office of parish priest, and with it the pastoral care of the parish, is entrusted solely and properly to the designated priest. Therefore the statement should be interpreted to mean that that the priest designated to direct the pastoral action is "endowed with the powers and the faculties of the parish priest." In this way the designated priest can be considered the parish priest, or his equivalent, with the consequence that the norms on the provision and the cessation of the office of parish priest (cf. cc. 520–527, 538) are applied to him, as well as (*mutatis mutandis*) the provisions on the functions and duties of the parish priest (cf. cc. 528–537). However, some of them must be adapted to the specific circumstances of the parish in question, either in the act of the appointment, or through a statute on the functioning of the pastoral activity approved by the bishop, where a special regulation is received, for example, the duty of residence (cf. c. 533) or the obligation to apply the Mass for the people *(cf. c. 534), etc.*

For their part, the rest of the faithful receive *a share in the exercise of the pastoral care entrusted mainly to the priest.* This can be juridically translated into the appointment for an *ecclesiastical office in the parish* (cf. c. 228 § 1), or, without the need for an appointment to a specific ecclesiastical office, through the *attribution of competencies* and the *granting of the faculties necessary* to exercise, through substitution, the tasks of pastoral care that cannot be performed normally by the designated priest or by other priests, and to carry out, under the direction of the designated priest, other tasks related to the progress of the parish.

The deacon, non-priest religious, nun, lay faithful (man or woman), or the community composed by them, which has been assigned to participate in the exercise of pastoral care, will be able to collaborate, by virtue of the charge received from the bishop and under the direction of a priest, through the exercise of the functions ordinarily conferred to the parish priest. Logically, he or she will not be able to perform the functions of care of souls that require a priestly character (cf. c. 150). It is advisable that they participate in the performance of the other functions that the Code itself attributes to the parish priest: not only the functions of an administrative or documentary type (cf. cc. 532–535), but also functions of spiritual formation and encouragement (cf. cc. 528–529). Moreover, on the occasions in which it is necessary, they will be able to fill an absence of an ordained minister in those functions of a liturgical character suitable to their canonical condition. These are enumerated in c. 230 § 3: "exercise the ministry of the word, preside over liturgical prayers, confer baptism and distribute Holy Communion, in accordance with the provisions of the law" (cf. *EdM*, 2, 6–9, 11–12). It is important to remember, regarding the liturgi-

cal functions presided over by women in the absence of priests, the Instr. *La fonction évangélisatrice*, of 1976, regarding the evangelizing function of the women in missionary lands.[25] This is indicated as the only source of this paragraph in the official edition of the Code.[26]

In this context, the statement of John Paul II should be recalled: "The performance of these tasks does not make a layperson a pastor." In fact, it is not the task that constitutes a ministry, but the sacramental ordination. Only the sacrament of orders attributes to the ordained ministry of the bishops and presbyters a particular share in the office Christ the Head and Pastor and in his eternal priesthood. The function that is exercised as a substitute acquires its legitimation, immediately and formally, from the official delegation by the pastors, and in its specific performance, it is directed by the ecclesiastical authority" (*CL*, no. 23; cf. *EdM*, *Theological principles*).

"A declaration of the Instruction regarding the need for appropriate terminology to designate the non-ordained faithful who perform these functions is based upon this teaching[27] [footnote 58: Such examples should include all those linguistic expressions which in languages of the various countries, are similar or equal and indicate a directive role of leadership or such vicarious activity.]" (*EdM*, 1 § 3).

In any event, if the *Theological Principles* and each of the *Practical Provisions* of the Instruction are evaluated as a whole. It can be stated that, unless the designated priest is absent from the parish for a reasonably prolonged period of time, and depending on the nature of each type of function, everything possible must be done in order that it be he, or another priest, or a deacon, who performs the functions that are especially entrusted to the parish priest (cf c. 530). This holds even if this involves a particular sacrifice, and even knowing that for some of them the status of priest is not required: e.g., the administration of baptism (cf. c. 530,1.°; *EdM*, art. 11), the administration of the Viaticum (cf. c. 530,3°; *EdM*, art. 9), assistance at marriages (cf. c. 530,4°; *EdM*, art. 10), the celebration of funerals (cf. c. 530,5°; *EdM*, art. 12), the Sunday celebration (cf c. 530,6°; *EdM*, art. 7) etc.

In this sense, it seems appropriate for the bishop to determine, in the very act of appointment or in a statute prepared for this purpose, what functions should be attributed to each one of the holders of this parochial office, keeping in mind the particular circumstances of the parochial com-

25. Cf. SCPF, Instr. *La fonction évangélisatrice*, November 19, 1976, in *EV* 5, nos. 1546–1587.

26. CPI, "Codex Iuris Canonici, fontium annotatione et indice analytico-alphabetico auctus," in *Civitate Vaticana* 1989, p. 146.

27. It is unlawful for the non-ordained faithful to assume titles such as "pastor," "chaplain," "coordinator," "moderator" or other such similar titles which can confuse their role and that of the Pastor, who is always a Bishop or Priest.

munities concerned. In the absence of a clear distribution of functions, it is for the designated priest to direct pastoral activity to determine what it is important to do in each case. As expressly indicated in *Motu proprio De Episcoporum muneribus*, upon him devolves exclusively the functions of "directing, coordinating, moderating or governing the Parish" (cf. art. 4 § 1, b), in accordance with current norms. In principle, unless the bishop has expressly determined otherwise, it also devolves upon the priest to be the legal representative of the parish and oversee the administration of the goods of the parish (cf. c. 532).

On the other hand, it is also necessary for the diocesan bishop to establish, through provisions of particular law, the conditions for the fitness of persons who, lacking the status of priest, may be called upon to perform this task (cf., by analogy, cc. 521 §§ 2–3, 524), and to establish suitable means for their necessary selection and formation. In this regard, the Instruction speaks of the responsibility of the competent authority with an indication that, due to it clear relevance to the case in question, should also be set forth in full:

a) "Should it become necessary to provide for 'supplementary' assistance in any of the cases mentioned above, the competent Authority is bound to select lay faithful of sound doctrine and exemplary moral life. Catholics who do not live worthy lives or who do not enjoy good reputations or whose family situations do not conform to the teaching of the Church may not be admitted to the exercise of such functions. In addition, *those chosen should possess* that level of formation necessary for the discharge of the responsibilities entrusted to them," and;

b) "In accordance with the norms of particular law, they should perfect their knowledge particularly by attending, in so far as possible, those formation courses organized for them by the competent ecclesiastical Authority in the particular churches, [footnote 112: Cf. *C.I.C.*, can. 231, § 1] (in environments other than that of the Seminary, as this is reserved solely for those preparing for the priest hood). [Footnote 113: Seminaries called 'integrated' or "mixed" must be excluded]. Great care must be exercised so that these courses conform absolutely to the teaching of the ecclesiastical magisterium and they must be imbued with a true spirituality." (*EdM*, art. 13).

The obligations and responsibilities of each, the initial and final times of the performance of their functions, and the appropriate salary for the actual, partial or exclusive, commitment of each should also be clearly determined through agreements that can take on various forms depending on the circumstances of the subjects involved: e.g., the assumption of an ecclesiastical office in the parish (cf. c. 228 § 1), especially indicated in the case of the deacon. The agreement of the bishop with the superior, in the case of religious, is contractual, especially in the case of the lay faithful.

In connection with the exceptional and supplemental nature of this method of entrusting pastoral care of the parish, it is advisable to stress some criteria indicated by *Motu proprio De Episcoporum muneribus*, which lead us to consider this method as the last recourse, allowed only "*ob sacerdotum penuriam* and not for reasons of convenience or ambiguous "advancement of the laity," etc.; (art. 4 § 1 a), and when it is impossible to use less extraordinary measures: "Because these are exceptional cases, before employing them, other possibilities should be availed of, such as using of the services of retired priests still capable of such service, or entrusting several parishes to one priest or to a *coetus sacerdotum*. [Footnote 75: Cf. *C.I.C.*, can. 517, § 1.]"

"In any event, the preference which this canon gives to deacons cannot be overlooked."(art. 4 § 1).

Lastly, with respect to the provisional nature of the provision of § 2, it should not be forgotten that an overly prolonged recourse of this type of measure can cause not only the impoverishment of the sacramental life of the parish, but also a certain *clericalization* of the laity; because, except in the case of the deacon, the performance of functions with a clear clerical content is entrusted to non-clergy. Of course, a lack of presbyters can force one to turn to innovative solutions allowing one to have the collaboration of other faithful to make up for their absence. Nevertheless, they are solutions that must be considered provisional, without any desire for permanence. Therefore, it seems necessary for this type of provision to always be accompanied by an urgent effort to promote the vocation of priest, which must be particularly intensified within the parish communities in question, as has been expressly stated in the recent document from the Holy See: "Solutions addressing the shortage of ordained ministers cannot be other than transitory and must be linked to a series of pastoral programmes which give priority to the promotion of vocations to the Sacrament of Holy Orders. ... 'The legislation of the Code of Canon Law has itself provided new possibilities, which however, must be correctly applied, so as not to fall into the ambiguity of considering as ordinary and normal, solutions that were meant for extraordinary situations in which priests were lacking or in short supply' [footnote 116: John Paul II, Discourse at the Symposium on "The Participation of the Lay Faithful in the Priestly Ministry" (11 May 1994), n. 2, in *L'Osservatore Romano*, English Language Edition, 11 May 1994]. ... 'It should also be understood that these clarifications and distinctions do not stem from a concern to defend clerical privileges but from the need to be obedient to the will of Christ, and to respect the constitutive form which he indelibly impressed on his Church' [footnote 117: ibid., no. 5.]" (*EdM, Conclusion*).

518 **Paroecia regula generali sit territorialis, quae scilicet omnes complectatur christifideles certi territorii; ubi vero id expediat, constituantur paroeciae personales, ratione ritus, linguae, nationis christifidelium alicuius territorii atque alia etiam ratione determinatae.**

As a general rule, a parish is to be territorial, that is, it is to embrace all Christ's faithful of a given territory. Where it is useful, however, personal parishes are to be established, determined by reason of the rite, language or nationality of Christ's faithful of a certain territory, or on some other basis.

SOURCES: c. 216 §§ 1, 2 et 4; CodCom Resp., 26 sep. 1921, 3; CodCom Resp. I, 20 maii 1923 (*AAS* 16 [1924] 113); Pius PP. XII Ap. Const. *Exsul Familia*, 1 aug. 1952, 32 (*AAS* 44 [1952] 699–700); *CD* 23; *ES* I, 21, 13; SCB Decl., 21 nov. 1966; *DPMB* 174

CROSS REFERENCES: cc. 102, 107, 383 § 2, 813, 1110, 1115

COMMENTARY

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1. The faithful's belonging to a determined parochial community, a specific manifestation of ecclesial communion inasmuch as it is a theological reality, is also juridically established through the criteria of determination (territorial or personal) established in the present canon (see commentary on c. 515). By baptism one is incorporated into the Church of Christ (cf. c. 96); nevertheless, "full communion with the catholic Church here on earth" is reached only when the baptized "are joined with Christ in his visible body, through the bonds of profession of faith, the sacraments and ecclesiastical governance" (c. 205). In effect, communion with the universal Church is realized *hic et nunc* through belonging to more particular communities which are like the specific expression of the Church; and therefore, in an immediate and visible manner, belonging to a parish, which "is there that the Church is seen locally. In a certain sense it is the *Church living in the midst of the homes of her sons and daughters*" (*CL* 26; cf. *SC* 42).

Consequently, it is an exigency of the *salus animarum* that all the faithful have a clear bond of ecclesiastical governance, which is why for centuries it has been intended that every member of the faithful belong to a certain parish. Thus it was established by the Council of Trent in advo-

cating the division of the diocesan community in determined parishes (*distincto populo in certas propriasque parochias*) for those places where the parochial churches did not have certain territorial boundaries (*certos fines non habent*), for which the territorial criterion was generally adopted.[1] Later, the first codification insisted on the division of the territory of the diocese into different territorial parts, identified with the parishes (cf. c. 216 §§ 1 and 3 *CIC*/1917). In effect, the territorial criterion of belonging to a parish permits the assurance that all the faithful present in a certain place enter into effective communion with the Church and its Pastors. On the other hand, the territory, besides having an indubitable value as a binding agent for human relationships, accomplishes the functions of stating the limits of competence among the ecclesiastical authorities and fosters their recognition on the part of the faithful.[2] Likewise the regulatory system in force provides, as a general rule, the recourse to the territorial parish: that to which the faithful uniquely belong by reason of the territory; that is, for having that parochial domicile or quasi-domicile; for presently residing in the territory of that parish, if they only have a diocesan domicile or quasi-domicile; or, in the case of a transient, for presently dwelling in that territory (cf. cc. 102, 107).

2. It is important to specify that what is explicitly considered as a general rule is that the territorial parish "is to embrace all Christ's faithful of a given territory." That is, generally it will be that way, "but where it is useful," the text continues, "personal parishes are to be established." Therefore, a reason of utility or convenience is sufficient to establish parochial communities on a personal basis[3] when the mere presence of a parish in the territory is not enough to assure the effective incorporation of a group of faithful into the territorial parish. This may be for various reasons such as different nationality or language, diversity of rite or ancient custom, etc. In these cases, the faithful are incorporated into a *personal parish* for reasons different from territory, and they will have a diocesan domicile instead of a parochial domicile (cf. c. 102 § 3).

In effect, even from former times non-territorial pastoral structures have been adopted in the Church, and among those that deserve to be emphasized are of the ritual kind.[4] Even after the Council of Trent, cases of non-territorial parishes permitted by the law have not been lacking. What Agustín Barbosa (1589–1649), celebrated canonist and author of an important work about the parochial office, stated regarding the tridentine decree previously mentioned is significant in this regard: "in such a conciliar

1. Cf. Council of Trent, *sess.* XXIV, November 11, 1563, *Decretum de reformatione*, c. 13.
2. Cf. J. CALVO, commentary on. c. 518, in *Pamplona Com.*
3. Cf. A. BORRAS, "La notion de curé dans le Code de droit canonique," in *Revue de Droit Canonique* 37 (1987), p. 225.
4. Cf. Lateran Council IV, Const. no. 9 *De diversis ritibus in eadem fidem*, Nnovember 30, 1215, which went on to form a part of *Corpus Iuris Canonici*; cf. E. FRIEDBERG, *Corpus Iuris Canonici*, II (Leipzig 1879–1888; anastatic edition, Graz 1956), cols. 191–192.

decree it is not understood that the parishes do not have determined boundaries (territorial), *certos fines non habent*, but have a defined people, and are distinguished by defined families, *certum tamen populum habent et per certas familias distinguuntur.*"[5] And, following, he mentioned the case of the dioceses of L'Aquila (Italy), where the parishes were not territorial but regional or familiar, for they were distinguished *non per domos materiales sed per populos seu familias.*[6] Nonetheless, the personal criterion is intertwined frequently with the territorial criterion; for which the canonical doctrine distinguished between personal parishes purely as such, and mixed personal parishes.[7] Likewise in Spain there have existed and still do survive personal parishes of various kinds:

a) familiar or regional (Saint Thomas Apostle and Saint Damian in the diocese of Calahorra, and the Mozarabic dioceses of Saint Eulalia and Saint Torcuato in Toledo, which are moreover *ritual* parishes);

b) national parishes (Saint Mary of Corticela for foreigners in Santiago de Compostela); and

c) military parishes (although they do not receive the denomination of parishes there are customarily considered as structures of a parochial type).[8]

3. In the present normative system the requirement of a special apostolic indult has disappeared for the constitution of *personal parishes* (cf. c. 216 § 4 *CIC*/1917). In fact, already in 1951, the Ap. Const. *Exul Familia* authorized the local ordinary to erect parishes for immigrants without need to go to the Holy See.[9] Consequently, it is enough that the bishop, having consulted the council of priests (cf. c. 515 § 2), considers its constitution advisable. This is according to the rite (cf. c. 383 § 2), language, or nationality of the faithful of a *territory*—therefore, customarily it will deal with *mixed* personal parishes, [10]or even because of another reason (e.g., the parishes for university centers mentioned in c. 813). In these cases, as *DPMB* 174 directed, it is important "to provide carefully for the validity of ecclesiastical acts." The Code establishes, specifically, in what parish marriages must be celebrated (cf. c. 1115), and in which cases the personal parish priest validly attends the marriage (cf. c. 1110). Otherwise, it will be

5. A. BARBOSA, *Pastorales sollicitudinis sive De officio et potestate Parochi* (Venice 1647), pt. I, ch. 1, p. 8, no. 23.

6. Ibid., no. 24.

7. Cf. E.F. REGATILLO, *Derecho parroquial* (Santander 1953), pp. 23–24.

8. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 17.

9. Cf. PIUS XII, Ap. Const. *Exsul Familia*, August 1, 1952, no. 32, in *AAS* 44 (1952), pp. 649–704.

10. Cf. G. SARZI-SARTORI, "La parrocchia personale nell'attuale disciplina della Chiesa," in *Quaderni di Diritto Ecclesiale* 2 (1989), pp. 165–173 (cf. p. 169); R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 48.

particular law that must establish with clarity the competences (cumulative or exclusive) of each parochial structure and the possible applicability of the laws promulgated for a certain territory to the faithful of the personal parishes (cf. cc. 12 and 13).

4. With the exception of the ritual parishes, in which there are other kinds of considerations, taken as the basis for the determination of the personal parochial community is "the sociological homogeneity of those who belong to it" (*DPMB* 174). That is to say, the intrinsic homogeneity of the social group that is going to constitute the personal parish, and the consequent extrinsic heterogeneity regarding the social group composed of the remaining faithful of the same territory. In this sense, it is important to state that the diversity of criteria to determine belonging to a parish is based on the need to adapt the pastoral structure to the sociological reality in which they perform their function.[11] In effect, it is proper to the sacramental nature of the Church: "a sign and instrument, that is, of communion with God and of unity among all men" (*LG* 1), so that the faithful enter into communion with it when they are incorporated into a particular and visible community (the diocese, and more specifically in this case, the parish). Conserving the *human* characteristics of the social group to which they belong, it is converted into an instrument of *supernatural* communion with the universal Church (cf. *LG* 8; *AG* 6). For this reason, in a situation of sociological homogeneity, each faithful will be able to belong without difficulty to the parochial community of the same territory, and the territorial division of the parochial communities will likewise make sense. Nevertheless, in heterogeneous sociological situations, in which integration into the predominant social group of the territory is problematic for certain faithful (e.g., communities of immigrants), it is understandable that those faithful have difficulties in belonging to the territorial parish, and it will be advisable, then, to establish personal parochial communities that perhaps better express the particular human characteristics of those faithful.

5. The advisability of leaving to the free decision of the faithful the possibility of being incorporated into the personal or territorial parishes merits special consideration. The decision, to attain juridical importance, must be given according to methods established by particular law. In effect, there is evident pastoral justification that the faithful of one certain language or country, recently arrived in a new country, can be welcomed into a community that is suitable for the particularities of their pastoral needs. Nevertheless, when, with the passage of time, those faithful (and with greater reason their children) are becoming incorporated into the social reality of the new country by learning the language or even by acquiring that new nationality it is advisable that they are integrated into the

11. Cf. A. DEL PORTILLO, "Dinamicidad y funcionalidad de las estructuras pastorales," in *Ius Canonicum* 9 (1969), pp. 305–329.

parochial community in which then they will be better recognized. That is the case, to cite an example, of the linguistic parishes that arose in the United States during the Nineteenth Century to welcome the immigrant faithful in that country.[12] In fact, the American bishops defended the freedom of the immigrants who, for the purpose of overcoming the risk of abandoning religious practice, in some cases began to frequent protestant churches of their own nationality, and by their children who, considering themselves already Americans, avoided going to the national parishes of their parents. This freedom of the faithful "to be able to leave the linguistic parish made, moreover—except in residual situations—these institutions to remain tied to the real needs of the faithful"[13] by favoring *Americanization*; namely, the complete incorporation of the immigrants into American society and the Church in the United States. This consideration based in the American phenomenon can be applied also, with the logical exception of the ritual parishes, to the majority of the cases that trigger the constitution of personal parishes.

12. Cf. J. GARCÍA DE CÁRDENAS, "La libertad de adscripción a las parroquias lingüísticas en los Estados Unidos en el s. XIX," in *Annales theologici* 7 (1993), pp. 129–155.

13. Ibid., p. 149. Also cf. J. SANCHIS, "La pastorale dovuta ai migranti ed agli itineranti (aspetti giuridici fondamentali)," in *Fidelium Iura* 3 (1993), pp. 451–494; G. TREVISAN, "La cura pastorale dei migranti," in *Quaderni di Diritto Ecclesiale* 2 (1989), pp. 158–164.

519 Parochus est pastor proprius paroeciae sibi commissae, cura pastorali communitatis sibi concreditae fungens sub auctoritate Episcopi dioecesani, cuius in partem ministerii Christi vocatus est, ut pro eadem communitate munera exsequatur docendi, sanctificandi et regendi, cooperantibus etiam aliis presbyteris vel diaconis atque operam conferentibus christifidelibus laicis, ad normam iuris.

The parish priest is the proper pastor of the parish entrusted to him. He exercises the pastoral care of the community entrusted to him under the authority of the diocesan bishop, whose ministry of Christ he is called to share, so that for this community he may carry out the offices of teaching, sanctifying and ruling with the cooperation of other priests or deacons and with the assistance of lay members of Christ's faithful, in accordance with the law.

SOURCES: cc. 216 § 1, 415 § 1; *CD* 30; *DPMB* 176

CROSS REFERENCES: cc. 89, 107, 150, 515, 520–537, 968 § 1, 1079–1081, 1105 § 2, 1106, 1108–1111, 1114–1115, 1118 § 1, 1177 § 2, 1196, 1°, 1203, 1245

COMMENTARY

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1. Without forgetting that the parish is a community in which all the faithful that compile it are called to cooperate actively in an organic way (see commentary on c. 515), it is necessary to point out the central place that the parish priest occupies within it. For this reason, the Code devotes special attention to the office of parish priest in the canons that follow: the notion of parish priest (cf. c. 519), the provision for the office of parish priest (cf. cc. 520–527), the integral functions of the pastoral care of the parish priest (cf. cc. 528–530) and the duties related to it (cf. cc. 531–537).

Before considering the canonical notion of parish priest, it is advisable to point out the kinds of parochial offices mentioned in the Code. On one hand, they can be classified as stable parochial offices: the office of parish priest and the office of assistant parish priest (cf. cc. 545–552); and as a temporary parochial office: the office of parochial administrator (cf. cc. 539–540). On the other hand, they constitute parochial offices *sui generis*: the parochial office conferred *in solidum* to a group of priests

(cf. c. 517 § 1), as well as the parochial office conferred upon the designated priest to lead the pastoral activity when, due to a lack of priests, it is entrusted to other faithful. Those who have not received the order of the presbyteriate, possibly through an *ecclesiastical office in the parish*, are parts in the exercise of the pastoral care of the parish (cf. c. 517 § 2; see commentary).

2. Inspired by the conciliar doctrine regarding the pastoral ministry of the diocesan clergy (cf. *CD* 28–32), the notion of parish priest of c. 519 offers a greater richness of ecclesiological content over the definition of the *CIC*/1917 (cc. 216 § 1, 451 § 1). Called to be a special cooperator of the bishop in the participation of the ministry of Christ, the parish priest is the proper pastor of the parochial community and carries out its pastoral care under the authority of the diocesan bishop. He accomplishes the functions of teaching, sanctifying, and governing, with the cooperation of other priests or deacons and with the help of lay faithful, pursuant to the norm of law. Therefore, it considers the notion of parish priest in its deep theological meaning and, at the same time, as being intimately tied to the notion of parish of c. 515.[1] It is opportune to limit ourselves in this commentary to the most meaningful aspects of this definition from the juridical point of view: the parish priest is the proper pastor of the parish that is assigned to him and he carries out the pastoral care of the community that is entrusted to him under the authority of the diocesan bishop.

3. Regarding the expression "proper pastor," applied to the parish priest, it is important to anticipate that, even though it has been the object of frequent study by canonical doctrine, a unanimous interpretation of its precise juridical meaning and of the differences that the application of the same expression has to the diocesan bishop has not been reached.[2] In effect, it has been traditional in the Church to designate as pastor, in the full and strict sense, the one who exercises pastoral care over the community of the faithful entrusted to him because of his sacramental participation in the pastoral ministry of Jesus Christ and because of his office.[3] And with this meaning, the present Code frequently utilizes the term *pastor* (cf. cc. 212–214, 228, 331, 333, 353, 369–370, 375 § 1, 383 § 1, 515–516, 519, 529, 652 § 2, 749 § 1, 822–823) or the expression *pastor of souls* (cf. cc. 771 § 1, 773, 794 § 2, 843 § 2, 861, 890, 898, 1001, 1063, 1072, 1128, 1252). Never-

1. Cf. A. BORRAS, "La notion de curé dans le Code de droit canonique," in *Revue de Droit Canonique* 37 (1987), pp. 215–216; J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), pp. 18–19; A. SOUSA-COSTA, commentary on c. 519, in *Commento al Codice di Diritto Canonico* (Rome 1985), p. 312; J.L. LARRABE, "La figura del párroco: su estatuto jurídico," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), pp. 31–54.

2. Cf. J.A. MARQUES, "El concepto de pastor y función pastoral en el Vaticano II," in *Ius Canonicum* 13 (1973), pp. 13–69.

3. Cf. J.A. MARQUES, "El concepto de pastor y función pastoral en el Vaticano II," in *Ius Canonicum* 13 (1973), pp. 13–69.

theless, it is important to keep in mind that for centuries, on considering the pastoral function of the bishop, the juridical aspect of governance or power of governance was emphasized and it came to "blurring the dynamic and apostolic meaning of the pastoral mission," such that, for much of the time, "the office of pastor will be reduced, in large part, to this power of governance."[4] The diffusion of this mentality led, among other things, to the spread of *Jansenism* and the appearance of the movement called *parochism*, to deny to the parish priest, especially for apologetical reasons, the character of pastor, for considering that the parish priest does not have true power of jurisdiction.[5] Regarding the adjective *proper*, it is important to state that already in the Middle Ages the expressions *sacerdos proprius, parochus proprius*, or *rector proprius* were used to indicate the priest who had entrusted to him the immediate care of a group of faithful that was considered, therefore, his *populus proprius.*[6] And with a similar meaning, the Code on occasion uses the expression proper pastor (cf. cc. 370, 515–516, 519) or, more precisely, the expression proper parish priest (cf. cc. 107, 1115, 1177 § 2). Nevertheless, a certain ambivalence of the adjective proper, sometimes referring to the proper pastor, and other time to the performance in the proper name of the power, likewise fostered the utilization of the expression *proper pastor* to denominate one who acted in the proper name of the power of governance, and to distinguish it thus from one to acted vicariously.[7]

Consequently, to evaluate the different scope of the expression "proper pastor" applied to the parish priest or to the diocesan bishop,[8] it is necessary to determine the nature of the functions attributed to the parish priest and to specify the meaning of that which the canonical doctrine called the power of the parish priest or parochial power. It is not without reason that the consideration of whether the parish priest is or is not a holder of *potestas regiminis* continues to be a topic of debate among canonists. This debate has not lacked on occasion a certain tendency to situate theological and juridical considerations on the same conceptual plane.

4. First, it is important to specify, in light of the other dispositions of the Code, the meaning of the functions that, pursuant to the present

4. A. DEL PORTILLO, "Dinamicidad y funcionalidad de las estructuras pastorales," in *Ius Canonicum* 9 (1969), p. 316. Also cf. B. DOLHAGARAY, "Curés," in *Dictionnaire de Théologie Catholique*, 3 (Paris 1908), cols. 2432–2434.

5. Cf. M. LUPI, *De parochiis*, II (Venice 1789), p. 314; D. BOUIX, *Tractatus de parocho* (Paris 1867), pp. 142–156.

6. Cf. A. VIANA, "El párroco, pastor propio de la parroquia," in *Ius Canonicum* 29 (1989), pp. 467–469.

7. Cf. D. MOGAVERO, "Il parroco e i sacerdoti collaboratori," in *La parrocchia e le sue strutture* (Bologna 1987), p. 121.

8. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), pp. 63–65; A. BORRAS, "La notion de curé dans le Code...," cit., pp. 222–223; J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 52–56.

canon, the parish priest performs in the parochial community. He conducts pastoral care under the authority of the diocesan bishop and performs the functions of teaching, sanctifying, and governing. Therefore, it is important to keep in mind the content of cc. 528–530, where with greater detail the tasks that make up the pastoral function of care of souls entrusted to the parish priest are described (see the respective commentaries). In effect, it is precisely through the parish priest's accomplishment of these tasks of the triple *munus pastoral*: *docendi* (cf. c. 528 § 1), *sanctificandi* (cf. cc. 528 § 2, 530), and *regendi* (cf. c. 529)[9] that pastoral care is performed and is carried out in the parochial community. Second, it is important to keep in mind that *potestas regiminis*, also called *power of governance*, to which c. 129 § 1 refers and, that, pursuant to c. 131 § 2, can be proper or vicarious, has a precise juridical meaning, different from the expression *munus regendi*, of a more general and theological content.[10] On the other hand, pursuant to c. 381, "all the ordinary, proper, and immediate power that is required for its pastoral function" in the particular church corresponds to the person who holds the capital office, for the pastoral function of the parish priest is carried out always under the authority of the diocesan bishop.

In this context, it can be useful to recall several expressions utilized by several Hispanic canonists of the sixteenth and seventeenth centuries (e.g. Agustín Barbosa, Jerónimo Cevallos, Esteban Daoyz, Alfonso Alvarez Guerrero and Francisco Salgado Somoza). These writers considered that the full care of souls of the faithful in the diocese corresponded to the diocesan bishop, for his being the holder of an office *plene curatum*; a plenitude that granted the possibility of entrusting to others the function of care of souls of the faithful of the diocese. To the parish priest, however, for being the holder of an office *non plene curatum*, corresponded the *semi-plenary* care of souls; that is, those pastoral functions that the bishop had entrusted to him in conformance with the norm of the law.[11] Logically, these distinctions (office *plene curatum* and *non plene curatum*, *plena* and *semiplena* care of souls) developed in the classical age of canon law, have a merely doctrinal value and must be understood in the present context. This is in a sense different from that expressed in the Code when it refers to "an office which carries with it the full care of souls,

9. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 473–479; J.C. PÉRISSET, *La Paroisse*..., cit., pp. 131–132.

10. Cf. E. LABANDEIRA, *Tratado de Derecho administrativo canónico* (Pamplona 1993), pp. 67–94; J. HERVADA, *Diritto Costituzionale Canonico* (Milan 1989), pp. 231–247; J.73–102; J.A. SOUTO, "El 'munus regendi' como función y como poder," in *Acta conventus internationalis canonistarum Romae diebus 20–25 maii 1968 celebrati*, In *Civitate Vaticana* 1970, pp. M. GONZÁLEZ DEL VALLE, "Jerarquía eclesiástica y autonomía pastoral," in *Ius Canonicum* 13 (1973), pp. 239–247; K. MÖRSDORF, "De conceptu officii ecclesiastici," in *Apollinaris* 33 (1960), pp. 75–87.

11. Cf. J.M. DÍAZ-MORENO, *La regulación jurídica de la cura de almas en los canonistas hispánicos de los siglos XVI–XVII* (Granada 1972), pp. 64–66.

for which the exercise of the order of prieshood is required" (c. 150).[12] Perhaps it might be preferable to distinguish between *Episcopal* pastoral function (or care of souls), and the *parochial* pastoral function.

By using the terminology of another time, one could affirm that only the bishop is the proper pastor on the full sense. To him correponds a pastoral function (or care of souls) that is *episcopal*, since he received the *plenitude* of the sacrament of holy orders and the *missio canonica* of the capital office in the particular church. This function that is done in one's own name and that *can* be entrusted to others. The parish priest, by the reception of the order of priesthood and the *missio canonica* of the office of parish priest, is also a *proper pastor* but in the *non-plenary* sense. To him correponds the *parochial* pastoral function (or care of souls), which he also exercises in his own name, not by mere delegation or as vicar of the bishop but subordinate to him, and which cannot be entrusted to others. In this same sense, but in other words, the canonical doctrine subsequent to the *CIC*/1917 called bishops pastors of the first order and parish priest as pastors of the second order.[13] Moreover, it is significant that in one of the first sessions of the codifying Commission that dealt with the definition of parish (the session of April 3–8, 1967 of the *coetus* "De Clericis"), to a consultor who had stated that "proprium pastorem esse Episcopum," it was answered "etiam parochum esse pastorem proprium, sub autoritate Episcopi et illam affirmationem non praeiudicare Episcopo."[14]

5. Consequently, to define the parish priest as a proper pastor of the parish simply means that the immediate pastoral care of the faithful of the parochial community corresponds to him. It is a task that he performs under the authority of the diocesan bishop, and that fundamentally consists in the performance of the functions stated in cc. 528–530. This does prevent pastors in the full sense (by means of ecclesiastical law), which only they can issue in the Church, from granting several specific faculties of the power of governance to pastors in the non-plenary sense, so that they perform them in their own name. In fact, the parish priest performs not only pastoral care, but also several functions in the external and internal forum granted expressly by the law (cf. cc. 89; 91–92; 968 § 1; 1079–1081; 1105 § 2; 1108–1111; 1114–1115; 1118 § 1; 1196, 1°; 1203, 1245). The Code employs, on occasion, the term "subjects" to refer to the passive subjects of the same (cf. cc. 1109–1110, 1196, 1°), or it even speaks of "jurisdiction" of the parish priest (cf. cc. 968 § 1, 1110). This has caused Labandeira to state that "in the Code the term "pastor" has been utilized profusely to signify that priest who has care of souls and power in the external and internal forum over a community of the faithful."[15] Neverthe-

12. Cf. A. BORRAS, "La notion de curé dans le Code...," cit., p. 218; P. LOMBARDÍA, *Lezioni di Diritto Canonico* (Milan 1985), pp. 145–146.
13. Cf. E.F. REGATILLO, *Derecho parroquial* (Santander 1953), p. 81–82.
14. *Comm.* 17 (1985), p. 95.
15. E. LABANDEIRA, *Tratado de Derecho administrativo canónico*, cit., p. 106.

less, they are dispositions that the law makes, because of the exigencies of the *salus animarum*, directly related to the pastoral function of the parish priest. It does not seem that it can be from this that the parish priest is the holder *stricto sensu* of the *potestas regiminis*,[16] nor that the performance of those faculties is the most specific of his work. Certainly, the role of "directing, coordinating, moderating or governing the Parish" devolves upon the parish priest by virtue of his office, as *Ed M* so indicates (art. 4 § 1, b). However, as Wernz stated, the parish priest does not belong but "in sensu *latiore*" to the hierarchy of jurisdictions, for "what is entrusted to him is a noble and very serious office of lending his help to the bishop in the administration of the ordinary and immediate care of souls."[17] In the words of *DPMB*, the parish priest performs "the direct and continuous care of the souls; in effect, this care is doubtless the fundamental requirement for the life of the ecclesial community," because of which "the spiritual and pastoral figure of the bishop must be reflected in it." (*DPMB* 176)

As emphasized in cc. 528–530, the mission of the parish priest is of a predominantly pastoral character, regarding care of souls and not specifically governance or jurisdiction,[18] since to speak of the power of the parish priest or of parochial power can lead to interpretations not at all suitable from the juridical point of view. To perform their ministry as rectors of the Christian people, to the priests, and more so to the parish priest, are conferred the corresponding spiritual power" (*PO* 6); thus it is theologically appropriate to speak of *potestas spiritualis* of the parish priest. Nevertheless, juridically, it seems improper to speak of ordinary power of governance of the office of parish priest, for the juridical power that, on occasion, the parish priest can exercise responds rather to delegation of power or habitual faculties (cf. c. 132)[19] granted expressly by the law to the person of the parish priest; faculties that, in the majority of cases (cf. cc. 89; 1079–1081; 1105 § 2; 1196, 1°; 1203, 1245), are not granted to him *by means* of the office of parish priest, but rather for being the holder of this office.[20]

6. Last, as the text of the canon states, to fulfill his mission, the parish priest can and must have the collaboration of the other members of the parochial community. This includes priests, deacons, and laity, according to the condition and function proper to each one and in conformance with the norm of law.

Regarding the collaboration of the lay faithful in the functions of ordained ministers, the following statements from the Instruction should be

16. Cf. C. CARDIA, *Il governo della Chiesa* (Bologna 1984), pp. 180–181.
17. F.X. WERNZ, *Ius Decretalium*, II (Rome 1906), p. 666 (also cf. pp. 677–679).
18. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 58.
19. Cf. J.C. PÉRISSET, *La Paroisse...*, cit., pp. 130–132.
20. Cf. E. LABANDEIRA, *Tratado de Derecho administrativo canónico*, cit., pp 139–140.

recalled: "With regard to these last mentioned areas or functions, the non-ordained faithful do not enjoy a right to such tasks and functions. Rather, they are 'capable of being admitted by the sacred Pastors ... to those functions which, in accordance with the provisions of law, they can discharge' [footnote 50: Cf. can. 228 § 1). And where 'ministers are not available... they can supply certain of their functions... in accordance with the provisions of law' [footnote 50: Cf. can. 228 § 1]" (*EdM, Theological principles*). In short, they are *normal* forms of collaboration or assistance from the faithful of the parish in the ministry of the parish, different from the *special* provisions established in situations of a lack of priests (see commentary on c. 517 § 2). In any event, collaboration from the members of the parish community will always be necessary, not only to help the parish priest in the exercise of his pastoral duties, but especially in the performance of the evangelizing duty of the entire parish community.[21]

In effect, neither must the parish priest be a "solitary worker,"[22] nor must the faithful leave the parish priest alone. On the contrary, they must help him and sustain him in his work: they have the moral and, on occasion, also juridical obligation (cf., e.g., cc. 212–222, 228, 536–537), of not letting him carry on his shoulders all the weight of the parish. Only in this way will they truly recognize in the parish priest, with a less technical meaning but perhaps more profoundly, their *proper pastor.*

21. Cf. A.S. SÁNCHEZ-GIL, "L'apporto dei fedeli laici all'esercizio della cura pastorale della comunità parrocchiale," in VV.AA., *Metodo, Fonti e Soggetti del Diritto Canonico,* Ed. J.I. Arrieta and G.P. Milano (Vatican City 1999), pp. 1131–1146.
22. P. URSO, "La struttura interna delle Chiese particolari," cit., p. 465.

520 **§ 1. Persona iuridica ne sit parochus; Episcopus autem dioecesanus, non vero Administrator dioecesanus, de consensu competentis Superioris, potest paroeciam committere instituto religioso clericali vel societati clericali vitae apostolicae, eam erigendo etiam in ecclesia instituti aut societatis, hac tamen lege ut unus presbyter sit paroeciae parochus, aut, si cura pastoralis pluribus in solidum committatur, moderator, de quo in can. 517 § 1.**

§ 2. Paroeciae commissio, de qua in § 1, fieri potest sive in perpetuum sive ad certum praefinitum tempus; in utroque casu fiat mediante conventione scripta inter Episcoporum dioecesanum et competentem Superiorem instituti vel societatis inita, qua inter alia expresse et accurate definiantur, quae ad opus explendum, ad personas eidem addicendas et ad oeconomicas spectent.

§ 1. A juridical person may not be a parish priest. However, the diocesan bishop, but not the diocesan Administrator, can, with the consent of the competent Superior, entrust a parish to a clerical religious institute or to a clerical society of apostolic life, even by establishing it in the church of the institute or society, subject however to the rule that one priest be the parish priest or, if the pastoral care is entrusted to several priests jointly, that there be a moderator as mentioned in c. 517 § 1.

§ 2. The entrustment of a parish, as in § 1, may be either in perpetuity or for a specified time. In either case this is to be done by means of a written agreement made between the diocesan bishop and the competent Superior of the institute or society. This agreement must expressly and accurately define, among other things, the work to be done, the persons to be assigned to it and the financial arrangements.

SOURCES: § 1: c. 452 § 1; SCCouncil Instr. *A chiarimento*, 23 ian. 1931; *ES* I, 33 § 1
§ 2: SCCouncil Instr. *A chiarimento*, 23 ian. 1931; SCR Normae, 15 feb. 1919; *ES* I, 33 § 1; SCRSI Normae, 1 mar. 1975

CROSS REFERENCES: § 1: cc. 510, 517 § 1, 611 § 3
§ 2: cc. 522, 681–682

COMMENTARY

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A consequence of the eminently pastoral function of the parish is the importance of conferring the responsibility of pastoral care, as long as it is possible, to an individual priest who will be its *proper pastor* (cf. cc. 519 and 526 § 2). In fact, it is significant that the Code reserves the term *parish priest* to the individual priest to whom the pastoral care of the parish is entrusted (cf., e.g., cc. 515, 519, 521, 526);[1] and avoids employing such terminology when, for various reasons, the pastoral care of the parish is entrusted in another manner (see commentary on c. 517).

1. In § 1, a juridical person is excluded from being appointed parish priest. In the past, by indult of the Holy See: cf. c. 452 *CIC*/1917, the office of parish priest was frequently conferred on a moral person (religious institute, monastery, chapter of canons, etc.) up to the point that this possibility was included in the canonical notion itself of parish priest: "the priest or moral person to whom the parish has been entrusted as holder with care of souls" (c. 451 *CIC*/1917).[2] Nevertheless, when the parish priest was a moral person, in order to avoid a possible uncertainty (considered damaging for souls) regarding the agent responsible for pastoral care, the prior regulatory system required the appointment of an assistant parish priest by the bishop. It distinguished, through a juridical fiction, between *habitual* care of souls, which corresponded to the moral person, and *present* care of souls, which was carried out by the assistant parish priest (cf. c. 472 *CIC*/1917).[3]

Canon 510, having regulated the case of the parishes joined to a chapter of canons, § 1 of the present canon preserves the possibility, granted only to the diocesan bishop and not to the diocesan administrator, of entrusting a parish to other kinds of juridical persons. Expressly mentioned are the clerical religious institutes and the clerical societies of apostolic life. It seems however, that other institutes could be included which, by having priests available, meet the conditions necessary to serve a parish fruitfully. The bishop, without need of approval from the Holy See, can resort to this possibility when he considers it advisable, after

1. Cf. *Comm.* 24 (1992), p. 109. Also cf. A. BORRAS, "La notion de curé dans le Code de droit canonique," in *Revue de Droit Canonique* 37 (1987), p. 230.

2. Cf. V. DE PAOLIS, "De paroeciis institutis religiosis commissis vel committendis," in *Periodica* 74 (1985), pp. 389–417; A. BORRAS, "La notion de curé dans le Code...," cit., pp. 218–219.

3. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 27; D. SCHIAPPOLI-P.G. GARON, "Parrocchia," in *Novissimo Digesto Italiano*, XII (Turin 1982), p. 450; T. MAURO, "Parroco," in *Enciclopedia del Diritto*, XXXI (Milan 1981), pp. 887–888.

consulting the council of priests (cf. c. 515 § 2), establishing even that a church of the institute be a parochial church, a very frequent phenomenon in former times and which led to the so called religious parishes.[4] Nevertheless, a very specific condition is established at the same time that modifies the juridical meaning of the prior situation: there must always be a priest who will be the parish priest (or the moderator, if the formula *in solidum* of c. 517 § 1 is adopted). The fundamental difference with respect to the prior regulation is in the diverse juridical content of what is entrusted to the institute. It is no longer the office of parish priest, which must always be held by a priest,[5] but the parish, and more specifically, the obligation of assuring that the pastoral care of the parish is well served. It is a fully juridical obligation, which is accompanied by appropriate rights to accomplish it (customarily including the right of presentation of the priest who will carry out the pastoral care: cf. c. 682 § 1), but different from the pastoral obligations and obligations that they are called to fulfill.[6]

2. For its part § 2 establishes that the entrustment of the parish to an institute can be for a fixed time or in perpetuity. Without prejudging the usefulness of this dual possibility, a certain consideration of the *benefice* concept of the parish can be recalled. As is well known, the benefices were considered perpetual by nature (objective perpetuity), and could be conferred for a fixed time or in perpetuity (subjective perpetuity) (cf. cc. 102 § 1, 1411 *CIC*/1917). Nevertheless, the juridical meaning of this point is also diverse: what is entrusted *ad certum praefinitum tempus* or *in perpetuum* is the obligation that parish be well served. It also establishes that the entrustment must always be done with a written agreement between the diocesan bishop and the competent superior, for whose formalization the models prepared by the competent authorities of each country can be followed.[7] In this agreement everything referring to the entrusted task must be regulated in an express and detailed manner to the people who carry it out by making mention of, in the proper case, of the right of presentation, and financial matters. It is a measure required for juridical security that can serve, to adapt the general regulatory system re-

4. Cf. E.F. REGATILLO, *Derecho parroquial* (Santander 1953), pp. 549–555.

5. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 462; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de* droit canonique de 1983 (Montréal 1989), pp. 63–64.

6. Cf. V. DE PAOLIS, "De paroeciis institutis religiosis commissis...," cit., pp. 408–409. Cf. F. OCÁRIZ, "Unità e diversità nella comunione ecclesiale," in *L'Osservatore Romano*, June 21, 1992, p. 11.

7. Cf., e.g., A. DE ANGELIS, "Convenzione sulle parrocchie tenute da religiosi," in *L'Amico del Clero* 68 (1986), pp. 280–285; D.J. ANDRÉS, "De paroeciarum commissione institutis et societatem clericalibus," in *Commentarium pro religiosis et missionariis* 67 (1986), pp. 156–167; V. DE PAOLIS, "Commento allo Schema tipo di convenzione per l'affidamento delle parrocchie ai religiosi," in *Informationes* SCRSI 12 (1986), pp. 133–150 and 233–259.

garding the parish to the particular characteristics of the institute in question. It is important, in any case, to harmonize the respect due to both the foundational spirit of the institute and the rights of the bishop and of the faithful of the parochial community. Logically, the faithful can join the spirituality proper to the institute or preserve.if they prefer,a different form of spiritual life (cf. c. 214 *in fine*). Diversity is the heart of the parish. Far from infringing upon communion among its members, it can be a sign of ecclesial communion with more profound roots: "characterized by a diversity and a complementarity of vocations and states of life, of ministries, of charisms and responsibilities" (*CL* 20; cf. *Communionis notio*, 15–16).

The content of § 2 is, on the other hand, similar to that of c. 681, which refers to the apostolic activities entrusted to religious by the diocesan bishop. Likewise, cc. 675, 678, 680, 682, 683, and 738 are applicable to the entrustment of a parish. In this sense, it is important to emphasize that the parish, since it is a cell of the diocese and a natural purview of diocesan pastoral activity, must always remain under the authority and direction of the diocesan bishop; likewise in those cases in which it is entrusted to institutions that are generally supra-diocesan.

521 **§ 1. Ut quis valide in parochum assumatur, oportet sit in sacro presbyteratus ordine constitutus.**

§ 2. Sit praeterea sana doctrina et morum probitate praestans, animarum zelo aliisque virtutibus praeditus, atque insuper qualitatibus gaudeat quae ad paroeciam, de qua agitur, curandam iure sive universali sive particulari requiruntur.

§ 3. Ad officium parochi alicui conferendum, oportet de eius idoneitate, modo ab Episcopo dioecesano determinato, etiam per examen, certo constet.

§ 1. To be validly appointed a parish priest, one must be in the sacred order of priesthood.

§ 2. He is also to be outstanding in sound doctrine and uprightness of character, endowed with zeal for souls and other virtues, and possessed of those qualities which by universal or particular Law are required for the care of the parish in question.

§ 3. In order that one be appointed to the office of parish priest, his suitability must be clearly established, in a manner determined by the diocesan bishop, even by examination.

SOURCES: § 1: c. 453 § 1
§ 2: c. 453 § 2; *CD* 31
§ 3: c. 459 §§ 1 et 3, 3°; CodCom Resp. I, 25 iun. 1932 (*AAS* 24 [1932] 284); *DPMB* 206

CROSS REFERENCES: § 1: c. 150
§ 2: cc. 149, 273–289
§ 3: c.524

COMMENTARY

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1. The specific subjective requirements that configure *canonical suitability* for the office of parish priest are indicated in this canon, which substantially reproduces c. 453 of the *CIC*/1917. Thus for the case of the parish priest, the general subjective requirements that must be met by one who is promoted to an ecclesiastical office are specified: "one must be in communion with the Church, and be suitable, that is, possessed of those qualities which are required for that office" (c. 149).

The reception of sacred orders of the priesthood constitutes the only requirement expressly demanded for the validity of the appointment as parish priest. It is an ineluctable consequence of his mission as pastor of the parochial community (cf. c. 519), being in charge of the care of souls of his faithful, "for which the exercise of the order of priesthood is required" (c. 150). In effect, said function can only be accomplished by him who, for his priestly character, participates in the ministerial priesthood and the mission of Christ: "in the ecclesial service of the ordained minister, it is Christ himself who is present to his Church as Head of his Body, Shepherd of his flock, high priest of the redemptive sacrifice, Teacher of Truth" (*CCC*, 1548). As *EdM* has pointed out, "The ministerial priesthood is therefore necessary for a community to exist as 'Church' [and in footnote 42 therein: 'The ordained priesthood should not be thought of as existing subsequent to the ecclesial community, as if the Church could be imagined as already established without this priesthood,' *PDV*, n. 16]. Indeed, were a community to lack a priest, it would be deprived of the exercise and sacramental action of Christ, the Head and Pastor, which are essential for the very life of every ecclesial community. Thus, the ordained priesthood is absolutely irreplaceable."[1] Consequently, priestly character as a prerequisite to the valid appointment of a parish priest does not admit of exceptions, "even in cases where there is a shortage of clergy [and in footnote 76 therein: 'The non-ordained faithful or a group of them entrusted with collaboration in the exercise of pastoral care cannot be given the title of "community leader" or any other expression indicating the same idea.']."[2]

2. In § 2 the personal qualities are stated that make up canonical suitability for the parochial ministry. It is a synthetic enumeration and non-exhaustive, to which can be added, as the text itself indicates, other qualities stated by the universal or particular law.

In the first place, it is required that he be outstanding for his correctness of doctrine and moral probity. It is particularly important, in times such as our own in which, together with a sincere quest for ethical and spiritual values, there is no lack of doctrinal and practical deviation in the heart of the Christian people, which every priest, and especially the parish priest, feel responsible for being a solid teacher of the truth and an attractive example of Christian life for the other faithful (cf. *PDV* 5–7). For this reason, he should be endowed with zeal for souls and of other virtues.

By provision of universal law, the obligations established for clerics in general are demanded of the parish priest—especially for his job: to respect and obey the Supreme Pontiff and his own ordinary (cf. c. 273); to foster unity with the bond of fraternity and prayer with the other faithful (cleric and lay: cf. c. 275); to search for holiness through the fulfillment of his pastoral ministry, by nourishing his spiritual life with the Holy Eucha-

1. *EdM*, *Theological Principles*, no. 3.
2. *EdM*, art. 4 § 1; and see commentary on c. 517 § 2).

rist and the Sacred Scriptures, the liturgy of the hours, spiritual retreats, mental prayer, frequent confession, devotion to the Blessed Virgin, and the practice of other means of sanctification (cf. c. 276); to steadfastly keep celibate (cf. c. 277); and to deepen his knowledge of the holy sciences and pastoral methods (cf. c. 279). For its part, particular legislation should consider those qualities with a greater effect in the proper particular church, as well as establishing the specific methods so that the *initial formation* of the parish priest can also be permanently performed, in conformance with the demands of the changing social reality and of his personal vocational career in the service of "that *new evangelization* which constitutes the essential and pressing task of the Church at the end of the second millennium" (*PDV* 70). As John Paul II has recalled, the goal of the *permanent formation* of a priest "cannot be the inculcation of a purely *professional* approach, which could be acquired by learning a few new pastoral techniques. Instead its aim must be that of promoting a general and integral process of constant growth, deepening each of the aspects of formation—human, spiritual, intellectual, and pastoral—as well as ensuring their active and harmonious integration, based on pastoral charity and in reference to it" (*PDV* 71).

Regarding the juridical effect of a candidate's lacking suitability for not having the requirements referred to in § 2 of this canon, it must be kept in mind what is established in c. 149 § 2: since it deals with requirements not expressly demanded for validity, the provision must be considered valid. In any case, two clearly different cases in this respect can be distinguished: the situation after appointment, which postulates what some have called *permanent suitability*,[3] and the situation prior to appointment, which requires a suitability that we can call initial. The distinction is not unimportant since the juridical repercussions of the lack of suitability differs in both cases: whereas for the lack of continued suitability—or lack of *permanent suitability*—only the route of removal would be appropriate (cf. cc. 1740–1747) or transfer to another office (cf. cc. 1748–1752); in the case of a lack of *initial suitability* rescission of the appointment pursuant to c. 149 § 2 would be the fitting response. It is important to specify, nevertheless, that rescission would only be possible if, shortly after the appointment, serious circumstances were to be discovered, *predating* the appointment and canonically relevant, against the suitability of the new parish priest, for example, the existence of irregularities or impediments to carrying out the order received (cf. c. 1044).

3. To avoid this kind of situation § 3 shows, from a positive point of view, the need to *state with certainty* the suitability of the future parish priest before proceeding to his designation. Regarding the method established by the diocesan bishop to assess the suitability of the candidate,

3. Cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), pp. 25–29.

"even by examination," it is important to have in mind the directions of c. 524, which deal more specifically with the *judgment regarding suitability* that the bishop must make. For this reason, as some authors have stated, perhaps it would have been preferable to situate the content of § 3, as a § 2 of c. 524[4] (see commentary for the consideration of the canonical regulation of judgment regarding suitability).

Regarding the suppression of the *law of competitive examination*, which remained in force in numerous dioceses until the first half of this century, see commentary on c. 523.

4. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 114.

522 **Parochus stabilitate gaudeat oportet ideoque ad tempus indefinitum nominetur; ad certum tempus tantum ab Episcopo dioecesano nominari potest, si id ab Episcoporum conferentia per decretum admissum fuerit.**

It is necessary that a parish priest have the benefit of stability, and therefore he is to be appointed for an indeterminate period of time. The diocesan bishop may appoint him for a specified period of time only if the Bishops' Conference has by decree allowed this.

SOURCES: c. 454 § 1; SCCouncil Decr. *Concilium Plenarium*, 24 iun. 1931; *CD* 31; *ES* I, 20 §§ 1 et 2; SCCouncil Rescr., 2 maii 1967

CROSS REFERENCES: cc. 184 § 1, 186, 455, 526, 527, 538, 1740–1752

COMMENTARY

Antonio S. Sánchez-Gil

1. Because of its direct repercussions on the good of souls, the *stability of the parish priest* traditionally has been considered a feature that characterizes the office of parish priest.[1] In this sense, it is important to specify that the present canon refers to the *subjective* stability of one who has been appointed to the office of parish priest ("parochus *stabilitate* gaudeat"); and not to the *objective* stability of the office of parish priest, a current characteristic in any ecclesiastical office ("quodlibet munus *stabiliter* constitutum": cf. c. 145 § 1). Consequently, the principle of stability of the parish priest is preserved in the present Code, with several innovations, whose proper evaluation requires a brief historical reflection on the evolution of the stability of the parish priest up to his present canonical configuration.

2. Related in its origin to the principle of *one parish, one parish priest* (see commentary on c. 526), the stability of the parish priest was understood since former times as equivalent to *in perpetuity.* In fact, the Council of Trent, upon establishing the division of the diocesan community into parishes, indicated that it would assign a perpetual parish priest to each one of them (*uniquique suum perpetuum peculiaremque paro-*

1. Cf. A. MARZOA, "El concepto de parroquia y el nombramiento de párroco (cuestiones en torno a los cc. 515 and 522)," in *Ius Canonicum* 29 (1989), pp. 458–465; *ID.*, "Nombramiento de párrocos y el criterio de estabilidad," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), pp. 55–72.

chum assignent).[2] This led to the perpetuity of the parish priest being understood by some classical authors as an essential feature of the *parochial* care of souls.[3] Nevertheless, perpetuity was spoken of not in absolute terms but in opposition to the temporary appointment of the parish priest. In this sense, perpetuity was juridically translated as *non-removable*, specified in an appointment *for an indefinite time*, but always *compatible with removal* for grave causes in conformance with the norm of law, when it was required for the good of souls.[4] Afterwards, on the occasion of the abandonment of their parishes by parish priest, caused by the events accompanying the French Revolution, the Holy See tolerated the practice of the French bishops of establishing priests *ad nutum Episcopi* at the head of the parishes.[5] Thus the distinction originated between *non-removable* and *removable* parishes, according to whether its holder had been given greater or lesser stability, manifested by the greater or lesser gravity of the causes for removal; but appointment for an indefinite time was maintained in both cases.[6] The *CIC*/1917, incorporating this distinction upon establishing different degrees of stability for the parish priest, considered non-removal as the general rule, and limited removal only to existing removable parishes, favoring in the meantime its transformation into a non-removable pastor (cf. c. 454 § 3 *CIC*/1917). This took into consideration that the greater stability of the parish priest ordinarily resulted in greater pastoral service for the good of souls. Likewise, it was stated that the parish priest should be stable in a parish (*stabiles in ea esse debent*), "which does not prevent everyone's being able to be removed according to the norm of law" (c. 454 § 1 *CIC*/1917).

Nevertheless, the terminology utilized, seen in relation to the excesses of the beneficial concept of the parish, evidently was acquiring negative connotations with the passage of the years, to the point that the office of parish priest came to be considered more as a personal right than service for the good of souls, with the practical result of the predominance—at least in the opinion of most—of the figure of *proprietary parish priest* over that of the *pastoral parish priest*. Vatican Council II, to overcome this vision of the office of parish priest and, in general, the performance of any ecclesiastical office, argued for a profound renewal of the beneficial system and the revision of the juridical regulations regarding the stability that the good of souls required. "Each parish priest should enjoy that security of tenure in his parish as the good of souls requires.

2. Cf. Council of Trent, *sess.* XXIV, November 11, 1563, *Decretum de reformatione*, c. 13.
3. Cf. J.M. DÍAZ-MORENO, *La regulación jurídica de la cura de almas en los canonistas hispánicos de los siglos XVI-XVII* (Granada 1972), p. 83.
4. Cf. B. DOLHAGARAY, "Curés," in *Dictionnaire de Théologie Catholique*, 3 (Paris 1908), cols. 2437–2440.
5. Cf. F.X. WERNZ, *Ius Decretalium*, II (Rome 1906), p. 671.
6. Cf. E.F. REGATILLO, *Derecho parroquial* (Santander 1953), p. 168; D. SCHIAPPOLI-P.G. CARON, "Parrocchia," in *Novissimo Digesto Italiano*, XII (Turin 1982), p. 452; T. MAURO, "Parroco," in *Enciclopedia del Diritto*, XXXI (Milan 1981), pp. 894–895.

Therefore the distinction between removable and irremovable parish priests should be abandoned and the procedure for the transfer or removal of a parish priest should be reexamined and simplified so that the bishop, while observing the principles of natural and canonical justice, may more suitably provide for the good of souls" (*CD* 31).[7]

Following the directions of the Council, the Code Commission made a real effort to combine the principle of stability with the requirements of the good of souls. In accordance with the traditional criterion, from the first schemata it aimed at identifying *stability* with an appointment *ad tempus* indeterminatum,[8] or—with the term that was finally accepted—*ad tempus indefinitum;*[9] that is, *sine termino ab initio praestabilito*. Nevertheless, the criterion of allowing the bishop to appoint *ad tempus determinatum* or *ad certum tempus* was likewise imposed; that is *cum termino praestabilito*, but only when the Bishops' Conference was to allow this method of proceeding through a decree. This was also considered as being compatible with the principle of stability: "stability can coexist with the concept of a definite time because *stabilitas* means not that he must be appointed for an indefinite time, but that *eo durante non debeat amoveri*."[10] At the same time, to emphasize the positive aspect of this norm, it was considered important to introduce in the text the term *stabilitas*, although without the conciliar reference *quam animarum bonum requirat*, already sufficiently treated in the canons regarding removal and transfer (cf. cc. 1740–1752). It is important to state that, in the final text, *stabilitas* remained connected by the term *ideoque* to appointment *ad tempus indefinitum*, which supposed a certain incongruence, for the very Commission had stated that stability was considered also compatible with appointment *ad certum termpus*.[11]

All in all, stability—as incorporated into canon 522, and in relation to canons 538 and 1740–1752—remains configured for its principal juridical purpose: the parish priest must be appointed with *stability*, therefore—and this would be a more appropriate use of the term *ideoque*—cannot lapse in his work without just cause and pursuant to the methods established in the law. The Code provides, on the one hand, that the appointment of the parish priest is, as a general rule, for an indefinite time, conserving stability, in this kind of appointment, with its traditional meaning. On the other hand, it is allowed—in the opinion of some authors, though the text does not expressly say it[12]—as an exception: *the possibil-*

7. Cf. A. MARZOA, "Nombramiento de párrocos y el criterio de estabilidad," cit., pp. 60–62.
8. Cf. *Comm.* 8 (1976), p. 26.
9. Cf. *Comm.* 14 (1982), p. 223.
10. *Comm.* 13 (1981), p. 272.
11. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 130; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 74.
12. Cf. A. MARZOA, "Nombramiento de párrocos y el criterio de estabilidad," cit., p. 71.

ity of an appointment for a determinate time; but only (*tantum*) if the Bishops' Conference allows it through a decree, in conformance with the procedure stated in canon 455. In this second kind of appointment, stability remains configured as one *continuity* temporarily defined.

3. Regarding the method of specifying this provision, it is important that the Bishops' Conference, in establishing this possibility, if it considers it opportune in the circumstances of the country itself, also states a minimum and well-determined time that is, moreover, sufficiently prolonged so that stability can be spoken of, in the sense of a certain continuity. In effect, the parish priest as proper pastor of the parish exercises in an immediate manner the directive to the continuity of pastoral care (see commentary on c. 519), for which "he cannot be equivalent to a *visiting* priest that offers those religious services that are asked of him; he must have, however, the stability that permits him to know the people and situations in which he works, and to schedule and carry out a pastoral activity that, to be effective, requires a sufficiently prolonged and certain period of time."[13] This is the way it was done in the CBS: "pursuant to c. 522, the diocesan bishop can appoint parish priests for a determinate time, generally for not less than six years, renewable if required for the good of souls."[14] And this has been the criterion followed by the majority of the Bishops' Conferences. Generally, the possibility is established for the appointment of parish priests for a determinate time, which is fixed as a period not less than six years, renewable.[15] In some cases it is expressly provided that the diocesan bishop, before making this kind of appointment, know the opinion of the council of priests (e.g., in Canada) or of the college of consultors (e.g., in Holland).[16] For its part the CBI, which in the beginning was limited to establishing the mere "faculty of naming parish priests *ad certum tempus*,"[17] ended by indicating that "the appointments of parish priest *ad certum tempus* have a duration of nine years."[18]

All in all, from a comparative examination of both normative provisions (c. 522 and art. 4 of the *First General Decree*of the CBS of July 7, 1984) several general considerations can be established for the appointment of parish priests by the Spanish bishops. It is left to the free decision

13. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 29. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), pp. 32–34.

14. CBS, "Primer Decreto General," July 7, 1984, art. 4, in *Boletín Oficial CEE* 1 (1984), pp. 95–104.

15. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al C.I.C.* (Milan 1990), pp. 44, 52, 64, 93, 100, 115, 131, 158, 188, etc. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

16. Cf. ibid., pp. 131 and 512.

17. President of the CBI, "Decreto di promulgazione e delibere," December 23, 1983, no. 5, in *Notiziario CEI* 7 (1983), pp. 205–211.

18. President of the CBI, "Decreto di promulgazione e delibere," September 6, 1984, no. 17, in *Notiziario CEI* 8 (1984), pp. 201–205.

of the bishop to establish in the act of appointment a greater or lesser stability for the parish priest, according to the good of souls. In principle, appointment for an indefinite time is considered preferable for better pastoral service; but it can also be done for a determinate time. In this case, the appointment should be for a period sufficiently prolonged, generally for not less than six years, and expressly stating its duration and the time fixed for its cessation (cf. c. 538 § 1). It also seems important that, in the act of appointment for a determinate time, the diocesan bishop make reference to the time period in which notification should be made that, pursuant to c. 186, makes the lapse effective, and state, moreover, the method that will be followed for a possible removal. Thus, the situation can be avoided in which, with the fulfillment of the fixed term and the waiting period for the cessation to become effective or for the possible removal to take place, the parish priest will remain for an indeterminate time in a situation of tacit extension *ad nutum Episcopi*, and, all in all, in a situation of precarious stability, contrary to traditional ecclesiastical discipline[19] and the present regulatory system (see commentary on c. 538), which could prejudice pastoral service. In this sense, it is important to state that the Bishops' Conference, in establishing the possibility of the appointment of parish priests for a determinate time, not less that six years, has expressly directed that "such appointment will be renewed automatically for another six years consecutively, as long as the bishop, for the good of souls, does not otherwise provide, for at least two months prior to the end of the term."[20]

4. Last, lacking in the present regulation subsequent determinations regarding the circumstance that can advise appointment for a determinate time, it is particularly important the diocesan bishop carefully assess what the good of souls and canonical equity require in each case (cf. *CD* 31). In this sense, it is important to recall that both the stability of the parish priest—whether for an indeterminate time or for a determinate time—and the greater freedom of the bishop in the distribution of the clergy in his diocese, correspond to the greater pastoral effectiveness or usefulness for the good of souls. Consequently is necessary to overcome, on the one hand, a vision that too much favors the non-removability of an appointment for an indefinite time, as if greater stability which it certainly produces is a personal right of the parish priest, forgetting his function of fostering continuity in pastoral work for the good of souls. On the other hand, it is also important to avoid an appointment for a determinate time be considered in practice as a mere juridical recourse to foster periodic removal of parish priest, at the exclusive service of a greater freedom for the bishop, forgetting the unquestionable usefulness that this kind of ap-

19. Cf. F.X. WERNZ, *Ius Decretalium*, II, cit., p. 686.
20. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali...*, cit., p. 566. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

pointment has in case of a lack of priests. All in all, an opportune balance should be reached, with canonical equity and for the good of souls, between the freedom of the bishop and the stability of the parish priest, whose legitimate interest in not being transferred too frequently and without being furnished a reason, must be protected against arbitrary decisions, which would be contrary to the judgment of the Church.

523 **Firmo praescripto can. 682 § 1, parochi officii provisio Episcopo dioecesano competit et quidem libera collatione, nisi cuidam sit ius praesentationis aut electionis.**

Without prejudice to can. 682 § 1 appointment to the office of parish priest belongs to the diocesan bishop, who is free to confer it on whomsoever he wishes, unless someone else has a right of presentation or election.

SOURCES: cc. 455–456; SCCouncil Resol., 19 feb. 1921 (*AAS* 14 [1922] 551–554); SCCouncil Resol., 21 iun. 1930 (*AAS* 25 [1933] 38–40); *CD* 28, 31

CROSS REFERENCES: cc. 148, 157–179, 520, 521 § 3, 524, 525, 682 § 1

COMMENTARY

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1. For the purpose of fostering the necessary freedom of the diocesan bishop "to allot the sacred ministries more suitably and more equitably among his priests," the Second Vatican Council considered opportune the suppression of "rights and privileges which in any way limit this freedom" (*CD* 28). Among other things it was advised that in the appointment to the office of parish priest "all rights whatsoever of presentation, nomination and reservation should be abrogated, without prejudice, however, to the rights of religious. Regulations for *concursus*, whether general or particular, should also be rescinded where they exist" (*CD* 31). This was carried out by the enabling norms of the conciliar decree (cf. *ES* I, 18 § 1). Nevertheless, it was specified in these norms that "if ... rights and privileges in this matter have been established by means of an agreement between the Apostolic See and a nation, or by means of a contract entered into with physical or moral persons, arrangements should by made with the interested parties for their cessation" (*ibidem* § 2).[1]

2. Keeping these precedents in mind, the present canon establishes that the appointment to the office of parish priest is a competence of the diocesan bishop who does so freely (cf. 157) except if another has the right of presentation (cf. cc. 158–163) or election (cf. cc. 164–179); in which case it is for the diocesan bishop—or diocesan administrator or one who provisionally governs the diocese (cf. c. 525,1°)—to grant the institu-

1. Cf. A. SOUSA-COSTA, commentary on c. 523, in *Commento al Codice di Diritto Canonico* (Rome 1985), p. 315.

tion or confirmation of the designated priest.[2] The special regime of the religious is preserved, according to which the religious parish priest "is appointed by the diocesan bishop with the prior presentation or at least the assent of the competent Superior" (cf. c. 682 § 1). And, although it might not be specifically stated, an analogous regime can be considered applicable to any other institution to which a parish is entrusted pursuant to canon 520, on the terms established in a written agreement (see commentary on c. 520). It is important to note, on the other hand, the disappearance in the current regulations of any reference to parishes reserved to the Holy See (cf. c. 455 § 1 *CIC*/1917).

In any case, the diocesan bishop must make the appointment to the office of parish priest, keeping in mind the rest of the norms regarding the appointment of parish priests. In fact, free conferral must necessarily be preceded by a judgment about the suitability of the candidate, in conformance with what is stated in canon 524, and subject to what is stated with certainty about the suitability according to the manner established by the diocesan bishop (cf. c. 521 § 3).[3] Likewise the institution or confirmation must be preceded by an assessment on the part of the bishop, which must confirm both the lawfulness of the presentation—or that the election was made in conformance with the norm of law—and as well the canonical suitability and free acceptance by the designated priest (cf. cc. 163, 179 § 2). On the other hand, it is necessary to keep in mind the general dispositions of the Code regarding appointment to an ecclesiastical office (cf. cc. 146–156); in particular those which refer to avoiding delays in appointment (cf. c. 151) or incompatibility with another office (cf. c. 152), the necessity that the office to be filled is vacant (cf. c. 153), and the written form of the appointment (cf. c. 156).[4]

3. Finally, and although nothing is said in the text about the abolished *law of competition*, it can be useful to recall, even briefly, its origin, goal, and development; especially regarding the extent that it reached in numerous dioceses in the last centuries. Competition (concursus)—which can be *general* or *special*, whether referring to all the vacant parishes or only to one of them—originated on the initiative of the Spanish and Portuguese bishops during the Council of Trent.[5] Worried about the growing neglect in the selection of parish priests, the bishops proposed competition as a method, compatible with any form of appointment (free collation, election, or presentation), to select the most suitable candidate among the various candidates for the office of parish priest. Developed through the Spanish canonical tradition, the law of competition was progressively ex-

2. Cf. J. CALVO, commentary on canon 523, in *Pamplona Com*; P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 468.

3. Cf. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), p. 77.

4. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), pp. 130–133.

5. Cf. Council of Trent, sess. XXIV, November 11, 1563, *Decretum de reformatione*, c. 18.

panding its application through the dispositions of the provincial councils, until Benedict XIV set up regulations for the competition and universal effect.[6] Nevertheless, it was only put truly into practice in Germany, Austria, Italy, Portugal, Spain, and Spanish America, where it remained in force from the eighteenth century until the first half of this century.[7] Notwithstanding the initial advantages—to stimulate the preparation of the candidate and to diminish the cases of arbitrariness—the competition was accompanied immediately by several striking problems: it led to a type of fighting among the candidates; it conferred upon the winner of the contest a strict right to the office of parish priest; and there were outside influences on the ecclesiastical authority in the provision for parishes.[8] For these reasons, Vatican Council II rightly considered the law of competition as an objective obstacle to the freedom of the bishop on this delicate subject, and finally abolished it (cf. *CD* 31). In any case, it can maintain a certain importance as a source of inspiration for the diocesan bishop, in relation to the method that he must establish in his diocese so that the suitability of the future parish priest is known with certainty, especially when referring to the content that could be an object of investigation or examination (cf. cc. 521 § 3, 524).

6. Cf. BENEDICT XIV, Const. *Cum illud*, December 14, 1742, which was included as an appendix in most of the Spanish editions of the *CIC*/1917.

7. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 31; E.F. REGATILLO, *Derecho parroquial* (Santander 1953), pp. 127–137; S. ALONSO, "Los párrocos en el Concilio de Trento y en el Código de Derecho Canónico," in *Revista Española de Derecho Canónico* 2 (1947), pp. 954–956; D. SCHIAPPOLI-P.G. CARON, "Parrocchia," in *Novissimo Digesto Italiano*, XII (Turin 1982), pp. 455–456; B. DOLHAGARAY, "Curés," in *Dictionnaire de Théologie Catholique*, 3 (Paris 1908), cols. 2444–2445.

8. Cf. F.X. WERNZ, *Ius Decretalium*, II (Rome 1906), p. 675.

524 **Vacantem paroeciam Episcopus dioecesanus conferat illi quem, omnibus perpensis adiunctis, aestimet idoneum ad paroecialem curam in eadem implendam, omni personarum acceptione remota ut iudicium de idoneitate ferat, audiat vicarium foraneum aptasque investigationes peragat, auditis, si casus ferat, certis presbyteris necnon christifidelibus laicis.**

The diocesan bishop is to confer a vacant parish on the one whom, after consideration of all the circumstances, he judges suitable for the parochial care of that parish, without any preference of persons. In order to assess suitability, he is to consult the Vicar forane, conduct suitable enquiries and, if it is appropriate, seek the view of some priests and lay members of Christ's faithful.

SOURCES: c. 459 §§ 1 et 3,1°; *ES* I, 19 § 2

CROSS REFERENCES: cc. 127 § 2, 2°, 153 § 1, 521, 538

COMMENTARY

Antonio S. Sánchez-Gil

Among the most important tasks of the bishop is, without doubt, the appointment of suitable parish priests for pastoral service in the parochial communities of his diocese. This responsibility, which the *CIC*/1917 established "graviter onerata conscientia" (cf. c. 459 § 1 *CIC*/1917), falls principally on the diocesan bishop, but also, to a different extent, on all those who participate in the appointment of the parish priest; likewise, logically in another sense, on the candidate for the office of parish priest himself, who—helped by the grace of the Holy Spirit and by welcoming the assistance which the Spirit itself provides—must endeavor to acquire the necessary suitability to exercise fruitfully the ministry he wishes to accomplish (cf. *PDV* 69). Among other things, he should first look to his personal holiness and the good of souls (cf. *PO* 12), and subordinately to his proper and lawful material sustenance.

For his part, the diocesan bishop *must* entrust the parish to the one he considers suitable; for this he is obliged to make a *judgment regarding the suitability* of the candidate. It is important to specify that, both in c. 521, which speaks of the required qualities "for the care of the parish in question," as in c. 524 here, which clearly addresses the "vacant parish" (cf. also cc. 153 § 1 and 538), reference is made to a *specific suitability*

for a determined parish.[1] A hypothetical general suitability for any parish, therefore, would not be enough, without requiring, rather, that the suitability be assessed in relation to the circumstances of the parish that is to be entrusted to the person.[2] In any case, it is no longer required, as it was in the prior Code, that *the most suitable candidate* be appointed (cf. c. 459 § 1 *CIC*/1917).

The judgment of suitability, which the bishop must make according to the manner he establishes, has as its purpose (as stated in § 3 of c. 521) that the *suitability* of the candidate for parochial care must be clearly established. Because of the subject dealt with, a physical certainty is not required, but a *moral certainty* of him who has put into place the means furnished to reach it.

Besides the possibility of giving an examination (cf. c. 521 § 3), which no longer is considered obligatory (cf. 459 §3 *CIC*/1917) but facultative, several criteria are established in the present canon that the bishop has to follow in the evaluation of the candidate. First, the diocesan bishop must consider all the circumstances of the case and avoid any preference of persons. Second, he *must* consult the vicar forane and undertake appropriate investigations. Regarding requesting the opinion of the vicar forane—in principle, it is the vicar forane of the place where the vacant parish is found[3]—the utilization of the term *audiat* makes one think, pursuant to canon 127 § 2, 2°, that it refers to a necessary requirement for the validity of the appointment.[4] Regarding appropriate investigations, it will be the diocesan bishop who shall determine the aspects regarding what must be done. Among other possible objects of investigation, special attention is warranted for the particular circumstances of the parochial community in question and, in relation to them, the personal qualities of the candidate: whether he is distinguished by his correct doctrine and moral probity; whether he is endowed of zeal for souls and other virtues; whether he has the qualities required by universal or particular law for the pastoral care of the parish that he intends to serve (cf. c. 521 § 2). Third, in the proper case, the diocesan bishop *can* request the opinion of other priests or lay faithful, among which can be included those who formed part of the parochial pastoral council when the parish became vacant.[5]

1. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), pp. 119–122; J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515-572* (Paris 1989), pp. 78–80.

2. Cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 24; P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), pp. 466–467.

3. Cf. F. COCCOPALMERIO, *De paroecia*, cit., p. 122.

4. Cf. ibid., p. 123. Also cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 32; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastorale de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), pp. 82–83.

5. Cf. R. PAGÉ, *Les Églises particulières*, II, cit., p. 84.

Last, it is interesting to point out that the fulfillment of these provisions by the diocesan bishop is a manifestation of his pastoral prudence, though it does not imply a juridical requirement for the bishop to follow the opinions received (cf. c. 127 § 2,2°). The important aspect is that the diocesan bishop arrive at an effective moral certainty regarding the suitability of the future parish priest; a certainty where it is important to have the other most directly interested members of the diocesan community be participants.[6] On the other hand, it is important, naturally, that said consultations and investigations are done with the discretion demanded by due respect for the good name of the candidate.

6. Cf. P. URSO, *La struttura interna delle Chiese particolari*, cit., p. 469.

525 **Sede vacante aut impedita, ad Administratorem dioecesanum aliumve dioecesim ad interim regentem pertinet:**

1° institutionem vel confirmationem concedere presbyteris, qui ad paroeciam legitime praesentati aut electi fuerint;

2° parochos nominare, si sedes ab anno vacaverit aut impedita sit.

When a see is vacant or impeded, it is for the diocesan Administrator or whoever governs the diocese in the interim:

1° to institute priests lawfully presented for a parish or to confirm those lawfully elected to one;

2° to appoint parish priests if the see has been vacant or impeded for a year.

SOURCES: c. 455 § 2

CROSS REFERENCES: cc. 151, 158–179, 412, 416, 421, 427 § 1, 428, 520 § 1, 523, 539

COMMENTARY

Antonio S. Sánchez-Gil

In application of the recommendation of canon 151: "The provision of an office which carries with it the care of souls is not to be deferred without grave reason," a partial repeal is made of the traditional principle "sede vacante nihil innovetur" (cf. c. 428 § 1), regarding the appointment of a parish priest.[1] Thus, by substantially reproducing the prior regulation (cf. c. 455 § 2 *CIC*/1917), the diocesan administrator or the one who provisionally governs the diocese is given a certain competence in the appointment to the office of parish priest; a competence that has greater or lesser scope whether the see is vacant or impeded for more or less than a year.

Specifically, during the first year of a vacant or impeded see, the diocesan administrator or the one who provisionally governs the diocese is given a *limited* competence: the appointment to the office of parish priest cannot be done by free conferral, but must be limited to the cases of pre-

1. Cf. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), p. 81.

sentation or election.[2] The reason for this provision is to avoid the deprivation or suspension of lawfully acquired rights. In any case, before granting the institution or confirmation of the designated priest, it will be necessary for the authority that provisionally governs the diocese to confirm both the lawfulness of the presentation—or that the election was done in conformance with the norm of law—and the canonical suitability of and free acceptance by the designated priest (cf. cc. 163, 179 § 2; see commentary on c. 523). On the other hand, pursuant to canon 427 § 1, during the first year of a vacant or impeded see the diocesan administrator—and, logically, likewise whoever provisionally governs the dioceses—also has the faculty and the obligation to provisionally provide for the pastoral service of the vacant parish with a parochial administrator (cf. c. 539).

Once the year since the see has become vacant or impeded has run, the limitation on competence regarding the cases stated in number 1° is removed; and thus an appointment to the office of parish priest will also be able to be made through free conferral. The intention is to avoid the situation where the parochial communities remain for too long without the pastoral service of a parish priest. On the other hand, as canon 520 § 1 expressly states, the diocesan administrator, or whoever provisionally rules the diocese, cannot entrust the parish to a clerical religious institute or to a clerical society of apostolic life, or to any other juridical person.

Nothing is said, however, regarding the possibility of entrusting the pastoral care of the parish through the formulas *in solidum* contained in canon 517. Keeping in mind that canon 427 § 1 excludes from the competence of the diocesan administrator "those matters which are excepted by the nature of things or by the law itself," it seems that it can be concluded, in view of the rather *exceptional* character of recourse to the formulas *in solidum* (see commentary on c. 517), there is no competence on the part of the diocesan administrator, or whoever provisionally rules the diocese, to entrust pastoral care through this kind of formula.

2. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 124; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 85.

526 **§ 1. Parochus unius paroeciae tantum curam paroecialem habeat; ob penuriam tamen sacerdotum aut alia adiuncta, plurium vicinarum paroeciarum cura eidem parocho concredi potest.**

§ 2. In eadem paroecia unus tantum habeatur parochus aut moderator ad normam can. 517 § 1, reprobata contraria consuetudine et revocato quolibet contrario privilegio.

§ 1. A parish priest is to have the parochial care of one parish only. However, because of a shortage of priests or other circumstances, the care of a number of neighbouring parishes can be entrusted to the one parish priest.

§ 2. In any one parish there is to be only one parish priest, or one moderator in accordance with can. 517 § 1; any contrary custom is reprobated and any contrary privilege revoked.

SOURCES: § 1: cc. 156 §§ 1 et 2, 460 § 1
§ 2: c. 460 § 2

CROSS REFERENCES: § 1: cc. 152, 534 § 2
§ 2: cc. 4, 5 § 1, 517 § 1, 543 § 2, 3°, 544

COMMENTARY

Antonio S. Sánchez-Gil

1. Because of the close relationship that binds the parish priest to the community of faithful entrusted to him, they were designated since ancient times, respectively, as *pastor proprius* and *populus proprius* (see commentary on c. 519). The consideration of the union of the bishop to his diocese as though it were a spiritual marriage, frequent in the first centuries of the Church, was applied later to the union between the parish priest and the parish, and incorporated into the Decree of Gratian.[1] Hence the formulation of the principle, *one parish priest, one parish* was arrived at, with the result that a good part of classical canon law doctrine concluded that *unicity,* both of for the parish priest and the parish, constituted an essential feature of *parochial* care of souls.[2] Nevertheless, in

1. Cf. *C* 21, q. 2, c. 4 *sicut in unaquaque*; *C* 7, q. 1, c. 39 *sicut alterius uxor.*
2. Cf., e.g., A. BARBOSA, *Pastoralis sollicitudinis sive De officio et potestate Parochi* (Venice 1647), pt. I, ch. 1, p. 12, nos. 43–44.

different times and places exceptions to this principle were accepted or at least tolerated by ecclesiastical authority.[3] Standing out among them, against the *unicity of the parish priest*, was the existence of the so called *proportionary* or *cumulative parish priests*, with a special jurisdiction *in solidum*, that survived by virtue of custom, privileges, or lawful statutes until the *CIC*/1917 established their reprobation (cf. c. 460 § 2 *CIC*/1917); or, likewise, the distinction between a *habitual parish priest* and an *actual parish priest*, afterwards called an *actual vicar* to avoid, at least in terminology, duplication of parish priests (cf. cc. 452 § 2 471 *CIC*/1917). Likewise against the *unicity of the parish*, a complex form of plurality of parishes was accepted through the so-called *equal union principle* of the parochial benefices, by which such benefices preserved their independence—because they continued to be considered incompatible offices (cf. c. 156 *CIC*/1917)[4]—in spite of having the same officeholder; a situation that the prior canon law codification expressly contemplated (cf. c. 460 § 1 *CIC*/1917) and remained in effect until the reform of the beneficial system. Consequently, the majority of authors ended up by rejecting *unicity*—of the parish priest or the parish—as an essential feature; but its importance was defended for the effective accomplishment of pastoral care.[5]

By preserving this consideration of principle while simplifying its regulation, § 1 of canon 526 recognizes as a general rule the *unicity of the parish*, for which "a parish priest is to have the parochial care of one parish only." Nevertheless, the possibility of entrusting the pastoral care of several *neighboring* parishes to the same parish priest is accepted when required by the circumstances; in particular when there is a shortage of priests. Therefore, the *legal* incompatibility between several offices of parish priest disappears, though there can be, in a specific case, a *physical* incompatibility in serving several parishes at the same time (see commentary on c. 152).

2. Regarding the juridical nature of *what is entrusted* when the pastoral care of a plurality of parishes is attributed to only one parish priest, some authors consider, in conformance with the literalness of the text (*plurium paroeciarum cura*), that it is a matter of "a single office of parish priest and a multiplicity of exercise."[6] Nevertheless, although the es-

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3. Cf. B. DOLHAGARAY, "Curés," in *Dictionnaire de Théologie Catholique*, 3 (Paris 1908), cols. 2436–2437.

4. Cf. M. CABREROS DE ANTA, commentary on c. 156, in *Código de Derecho Canónico y legislación complementaria. Texto latino y versión castellana con jurisprudencia y Commentarys* (Madrid 1967), p. 67.

5. Cf. F.X. WERNZ, *Ius Decretalium*, II (Rome 1906), p. 669; D. BOUIX, *Tractatus de parocho* (Paris 1867), pp. 180–191; E.F. REGATILLO, *Derecho parroquial* (Santander 1953), pp. 16 and 166–168; S. ALONSO, "Los párrocos en el Concilio de Trento y en el Código de Derecho Canónico," in *Revista Española de Derecho Canónico* 2 (1947), pp. 956–959.

6. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), p. 85.

sence of the office of parish priest is pastoral care and there is no difficulty in considering the pastoral care of various parishes *in practice* as *a single task* that the parish priest must perform, in a strictly juridical analysis it seems preferable to consider said task as a *plurality of offices*. In fact, pastoral care is the spiritual end for which the office of parish priest is established (cf. c. 145), and it is not identified *stricto sensu* with him. Consequently, when the Code speaks of entrusting the care of several parishes to the same parish priest, it seems that it must be understood that this is done through the canonical provision to the office of parish priest in each case (cf. cc. 146, 986 § 1). Moreover, it is easier this way to distinguish, right from the act of provision, the possible particularities that, according to the pastoral needs of the case, could affect the parishes in question and to consider repercussions in the corresponding offices: such offices can be entrusted at the same time or at chronologically separate moments; it can be established that there be a single act of taking of possession or several (cf. c. 527); a parish priest can be appointed for an indefinite time in one parish or for a determinate time in the rest (cf. c. 522); his office can lapse in one parish and remain preserved in others (cf. c. 538); etc. On the other hand, the consideration of a plurality of offices emphasizes more the autonomy of the entrusted parishes: in effect, each parish conserves unaltered the configuration that it had before the appointment of a common parish priest, and it will be opportune to maintain, therefore, in the majority of cases, a juridical representation separate from each one of them (cf. c. 532).

Despite everything, it is important to state that the usual practice in Spain consists in placing all the responsibilities and corresponding faculties of the several entrusted parishes on a single parish priest, but to consider him juridically as the titular parish priest of one and the parochial administrator of the others.[7]

3. Regarding the accomplishment of his obligations, in the case of a parish priest to whom are entrusted various parishes, the Code only refers to the manner of applying Mass for the people: he must "apply only one Mass ... for all the people entrusted to him" (c. 534 § 2). Otherwise, he will have to follow the provisions of particular law and what the bishop might provide in the act of appointment, or the local ordinary on subjects within his competence (cf. e.g. c. 533).

4. For its part § 2 of c. 526 maintains without exceptions the principle of *unicity of the parish priest*. Therefore, the appointment of a plurality of parish priests, or a plurality of moderators in the case of exercise *in solidum* of the parochial ministry is prohibited (cf. c. 517 § 1). The reprobation of contrary custom and the revocation of every contrary privilege is maintained; even though, as some authors have pointed out, it is a matter

7. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 25.

of a disposition that is not directed toward the past—as happened in the *CIC*/1917, c. 460 § 2—but that it intends to avoid in the future the appearance of contrary customs or privileges (cf. cc. 4, 5 § 1).[8] Therefore, in the presence of a plurality of priests in a specific parish, it will be necessary to clearly determine which of them is the parish priest (or moderator).[9] In this way, both juridical certainty (cf. cc. 532, 543 § 2,3°) and the effective coordination of pastoral activity (cf. c. 544 *in fine*) are fostered.

8. Cf. ibid., p. 27. Also cf. J.C. PÉRISSET, *La Paroisse...*, cit., p. 87.
9. Cf. A. SOUSA-COSTA, commentary on c. 526, in *Commento al Codice di Diritto Canonico* (Rome 1985), p. 316.

527 **§ 1. Qui ad curam pastoralem paroeciae gerendam promotus est, eandem obtinet et exercere tenetur a momento captae possessionis.**

§ 2. Parochum in possessionem mittit loci Ordinarius aut sacerdos ab eodem delegatus, servato modo lege particulari aut legitima consuetudine recepto; iusta tamen de causa potest idem Ordinarius ab eo modo dispensare; quo in casu intimatio dispensatio paroeciae notificata locum tenet captae possessionis.

§ 3. Loci Ordinarius praefiniat tempus intra quod paroeciae possessio capi debeat; quo inutiliter praeterlapso, nisi iustum obstiterit impedimentum, paroeciam vacare declarare potest.

§ 1. One who is promoted to exercise the pastoral care of a parish obtains this care and is bound to exercise it from the moment he takes possession.

§ 2. The local Ordinary or a priest delegated by him puts the parish priest into possession, in accordance with the procedure approved by particular Law or by lawful custom. For a just reason, however, the same Ordinary can dispense from this procedure, in which case the notification of the dispensation to the parish replaces the taking of possession.

§ 3. The local Ordinary is to determine the time within which the parish priest must take possession of the parish. If, in the absence of a lawful impediment, he has not taken possession within this time, the local Ordinary can declare the parish vacant.

SOURCES: § 1: c. 461
§ 2: c. 1444 § 1
§ 3: c. 1444 § 2

CROSS REFERENCES: § 1: cc. 191, 382 § 1
§ 2: cc. 382 §§ 3–4, 542, 3°, 833, 8°, 1283
§ 3: c. 382 § 2

COMMENTARY

Antonio S. Sánchez-Gil

1. Once the appointment of the parish priest is made in conformance with cc. 521–526, *taking of possession* marks the moment in which the

parish priest assumes the exercise of the parochial office and, thereby, the pastoral care of the parochial community. It is, therefore, a solemn act that begins the parochial ministry: from the taking of possession "*initial* moment" to its time of cessation "*final* moment" (cf. c. 538), the parish priest *lawfully* exercises the rights and obligations that the office of parish priest implies (cf. c. 1381).[1] As in other places in the Code (e.g., cc. 191, 382, 404), the term *possessio* is preserved, although shorn of its traditional *materialist* meaning; for it no longer refers to the parish itself but to pastoral care, or more precisely, to the office of parish priest.[2] It is important to recall, in this context, the influence of canonical thought in the *spiritualization* of the *possessio* carried out by the authors of European Common Law; which expanded its traditional goal—things in the *possessio* of the Roman Law—also to the rights or the situations that the exercise of rights imply, including ecclesiastical offices, through the so-called *quasi-possessio*.

2. Both for its character as a solemn act and for the requirements of juridical certainty regarding the good of souls, the taking of possession must be granted by competent authority and accomplished in the lawfully determined manner and time. The provisions of the present canon are limited to stating the most general features. In § 2 it is established that the *competent authority* to grant it is the local ordinary, though he can delegate it to a priest. And regarding the *manner* of realizing it, it is referred to the prescribed modality of the particular law or lawful custom, though the local ordinary (not the delegated priest) can dispense with its observance when there is just cause (e.g., illness, persecution, etc.). In this case the notification of dispensation, which must be had in writing and be appropriately published (cf. cc. 37 and 55), substitutes for the taking of possession. Regarding the *time* in which the taking of possession must be accomplished, § 3 states that the local ordinary will so determine, and will also be able to declare the parish vacant if not done in time and, in the absence of a just impediment, the taking of possession is not accomplished. In any case, for reasons of juridical certainty, it seems necessary that the particular regulations substitute for—in general or for a particular case—the certain indetermination of the present regulation. Specifically, if the taking of possession is not had in the time determined by the local ordinary, it seems necessary also that there be set a period of time to confirm whether there was a just impediment, or in its absence, for the exercise on the part of the ordinary of the faculty of declaring the parish vacant; otherwise there would be situation of uncertainty that could affect both the validity of some acts (e.g., assistance at a marriage, administration of goods,

1. Cf. J. CALVO, commentary on c. 527, in *Pamplona Com*; P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), pp. 471–472.
2. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), pp. 89–90.

etc.) and the normal work of pastoral care. On the other hand, it also seems important in most cases to inform the civil authorities of the taking of possession whether for reasons of courtesy or to facilitate the civil recognition of administrative acts regarding property that the parish priest must carry out in the representation of the parish (cf. c. 532).

3. Although nothing is said in the text, pursuant to other provisions of the Code, the taking of possession must be preceded or accompanied by the realization before the local ordinary or his delegate, a series of acts that cannot be affected by the possible dispensation of the observance of the manner of taking possession.[3] In particular, and keeping in mind that from the taking of possession the parish priest is the legal representative and the canonically responsible person for the administration of the property of the parish (cf. c. 532), the parish priest must take an *oath of good and truthful performance*, and an exact and detailed inventory of the parochial patrimony_must be made (cf. c. 1283). Moreover, for having received an office that is exercised in the name of the Church, the parish priest must make the *profession of faith* according to the formula approved by the Apostolic See (cf. cc. 833,6°, 542,3°).[4] Subsequent to the Code, the CDF established the coming into force, dated March 1, 1989, of the new formula of profession of faith approved by the Apostolic See (cf. c. 833), and the extension of the obligation of taking a special *fidelity oath* (formerly prescribed only for bishops) to the cases mentioned in c. 833, 5°–8°, among those included were the parish priest.[5]

4. Regarding the manner of the taking of possession established by virtue of particular law or lawful custom, it is important to keep in mind that the taking of possession by the parish priest represents, beyond its juridical meaning, a moment of special importance in the life of the parochial community. It will be, therefore, very opportune to give it a festive configuration and a special solemnity, likewise from the liturgical point of view. In effect, it is around the altar, gathered together next to their own pastor for the celebration of the Holy Eucharist, where the parochial community finds its most poignant expression. It is important, therefore, that the taking of possession customarily be done in the parochial church, with the greatest possible participation of faithful, during a solemn celebration of the mass, presided over, if possible, by the bishop, and concelebrated

3. Cf.ibid., pp. 91–92. Also cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 36; J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 89 and 191–192.

4. Cf. L. DE ECHEVERRÍA, commentary on c. 527, in *Salamanca Com.*

5. Cf. CDF, *Professio fidei et iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo*, January 9, 1989, in *AAS* 81 (1989), pp. 104–106; CDF, *Rescriptum ex audientia SS.mi formulas professionis fidei et iuris iurandi fidelitatis contingens foras datur*, September 19, 1989, in *AAS* 81 (1989), p. 1169.

by the new parish priest and by the other priests of the neighboring parishes.[6] If appropriate, the *rite of ingress of the new parish priest* can be followed, which is contained in the *Ceremonial of Bishops*,[7] and in which both the taking of possession and the realization of the accompanying acts are contemplated.

6. Cf. M. MORGANTE, *La parrocchia nel Codice...*, cit., pp. 34–35.
7. Cf. *Caeremoniale Episcoporum*, promulgated with the authority of JOHN PAUL II, September 14, 1984, nos. 1185–1189.

528 **§ 1. Parochus obligatione tenetur providendi ut Dei verbum integre in paroecia degentibus annuntietur quare curet ut christifideles laici in fidei veritatibus edoceantur, praesertim homilia diebus dominicis et festis de praecepto habenda necnon catechetica institutione tradenda, atque foveat opera quibus spiritus evangelicus, etiam ad iustitiam socialem quod attinet, promoveatur peculiarem curam habeat de puerorum iuvenumque educatione catholica omni ope satagat, associata etiam sibi christifidelium opera, ut nuntius evangelicus ad eos quoque perveniat, qui a religione colenda recesserint aut veram fidem non profiteantur.**

§ 2. Consulat parochus ut sanctissima Eucharistia centrum sit congregationis fidelium paroecialis; allaboret ut christifideles per devotam sacramentorum celebrationem, pascantur, peculiarique modo ut frequenter ad sanctissimae Eucharistiae et paenitentiae sacramenta accedant; annitatur item ut iidem ad orationem etiam in familiis peragendam ducantur atque conscie etactuose partem habeant in sacra liturgia, quamquidem, sub auctoritate Episcopi dioecesani, parochus in sua paroecia moderari debet et, ne abusus irrepant, invigilare tenetur.

§ 1. The parish priest has the obligation of ensuring that the word of God is proclaimed in its entirety to those living in the parish. He is therefore to see to it that the lay members of Christ's faithful are instructed in the truths of faith, especially by means of the homily on Sundays and holy days of obligation and by catechetical formation. He is to foster works which promote the spirit of the Gospel, including its relevance to social justice. He is to have a special care for the catholic education of children and young people. With the collaboration of Christ's faithful, he is to make every effort to bring the gospel message to those also who have given up religious practice or who do not profess the true faith.

§ 2. The parish priest is to take care that the blessed Eucharist is the centre of the parish assembly of the faithful. He is to strive to ensure that Christ's faithful are nourished by the devout celebration of the sacraments, and in particular that they frequently approach the sacraments of the blessed Eucharist and penance. He is to strive to lead them to prayer, including prayer in their families, and to take a live and active part in the sacred liturgy. Under the authority of the diocesan bishop, the parish priest must direct this liturgy in his own parish, and he is bound to be on guard against abuses.

SOURCES: § 1: cc. 467 § 1, 468, 469; *SC* 35, 52; *UR* 11; *CD* 30; *PO* 6, 9; Paulus P.P. VI, m. p. *Sacram Liturgiam*, 25 ian. 1964, III (*AAS* 56 [1964] 139–144); *IOe* 53
§ 2: Pius P.P. XII, Alloc., 17 feb. 1945; *SC* 42, 59; *CD* 30; *EMys* 26

CROSS REFERENCES: § 1: cc. 757, 767–771, 773, 776–777
§ 2: cc. 834–836, 840, 899

529 **§ 1. Officium pastoris sedulo ut adimpleat, parochus fideles suae curae commissos cognoscere satagat; ideo familias visitet, fidelium sollicitudines, angores et luctus praesertim participans eosque in Domino confortans necnon, si in quibusdam defecerint, prudenter corrigens; aegrotos, praesertim morti proximos, effusa caritate adiuvet, eos sollicite sacramentis reficiendo eorumque animas Deo commendando; peculiari diligentia prosequatur pauperes, afflictos, solitarios, e patria exsules itemque pecularibus difficultatibus gravatos; allaboret etiam ut coniuges et parentes ad officia propria implenda sustineantur et in familia vitae christianae incrementum foveat.**

§ 2. Partem quam christifideles laici in missione Ecclesiae propriam habent, parochus agnoscat et promoveat, consociationes eorundem ad fines religionis fovendo. Cum proprio Episcopo et cum dioecesis presbyterio cooperetur, allaborans etiam ut fideles communionis paroecialis curam habeant, iidemque tum dioecesis tum Ecclesiae universae membra se sentiant operaque ad eandem communionem promovendam participent vel sustineant.

§ 1. So that he may fulfil his office of pastor diligently, the parish priest is to strive to know the faithful entrusted to his care. He is therefore to visit their families, sharing especially in their cares, anxieties and sorrows, comforting them in the Lord. If in certain matters they are found wanting, he is prudently to correct them. He is to help the sick and especially the dying in great charity, solicitously restoring them with the sacraments and commending their souls to God. He is to be especially diligent in seeking out the poor, the suffering, the lonely, those who are exiled from their homeland, and those burdened with special difficulties. He is to strive also to ensure that spouses and parents are sustained in the fulfilment of their proper duties, and to foster the growth of christian life in the family.

§ 2. The parish priest is to recognise and promote the specific role which the lay members of Christ's faithful have in the mission of the Church, fostering their associations which have religious purposes. He is to cooperate with his proper bishop and with the presbyterium of the diocese. Moreover, he is to endeavour to ensure that the faithful are concerned for the community of the parish, that they feel themselves to be members both of the diocese and of the universal Church, and that they take part in and sustain works which promote this community.

SOURCES: § 1: cc. 467 § 1, 468 § 1; Pius P.P. XII, Alloc., 6 feb. 1940; *CD* 18, 30; *PO* 6
§ 2: *CD* 30; *PO* 7–9

CROSS REFERENCES: § 1: cc. 282 § 2, 848, 1001
§ 2: cc. 204, 209, 215

COMMENTARY

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1. The parochial community, since it is a pastoral structure of the diocese, is the privileged purview of ordinary pastoral care (see commentaries to c. 515, 519). In effect, the fundamental content of the office of parish priest, the purpose for which it has been permanently constituted, is the ordinary *cura animarum*. Through the ministry of the parish priest, a priest who makes Christ present, the faithful—and, in general, all humankind—can find the ordinary means of salvation that Jesus Christ has entrusted to the Church in the parish. Thus, in cc. 528–529, the tasks are stated that make up the *pastoral function of the care of souls* entrusted to the parish priest. By carrying out these tasks, the parish priest fulfills for the parochial community the triple *munus pastorale*: *docendi* (cf. c. 528 § 1), *sanctificandi* (cf. c. 528 § 2), and *regendi* (cf. c. 529).[1] In this sense, it is important to emphasize the effort made by the legislator to translate into canonical language the very core of the mission of salvation of the Church. A group of tasks are enumerated as specific *obligations of the parish priest*, whose fundamental objective is the solicitous care for the salvation of all souls, in a way that they know Jesus Christ, keep his commandments, and reach the fullness of his charity. In effect, this is the point

1. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), pp. 473–479; J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 131–132.

of pastoral care: "Curae pastoralis finis est cognitio Iesu Christi, eiusque mandata observare, quorum plenitudo charitas."[2] All in all, it is the reason for being of the priestly ministry and, in the last instance, of the Church itself. Therefore, any commentary on these canons runs the risk of being incomplete or reductive, for in them are condensed the life and mission of the Church, the universal sacrament for salvation (cf. *LG* 48). Consequently, it seems important to be limited to a brief consideration of their content, recommending an attentive reading of the conciliar documents of which they are more directly inspired (cf. *SC* 35, 42, 52, 59; *CD* 30; *PO* 4–6, 9; *AA* 2, 10).

2. In canon 528 the parish priest is contemplated as the principal person responsible in the parish for the *educative function* (§ 1) and the *sanctifying function* (§ 2).[3] The obligation of the parish priest is established for using all the necessary means for formation in the faith and the sanctification of the members of the parochial community and of those who are in the boundaries of the parish. Certainly these are tasks regulated more broadly in other places in the Code, which now are placed into direct relationship with the office of parish priest.

a) The responsibility of the parish priest in proclaiming the word of God and the preaching of the Christian doctrine (cf. cc. 757, 762), the homily (cf. cc. 767–768) and catechetical instruction (cf. cc. 773, 776–777) is expressly mentioned. Other responsibilities include the fostering of initiatives that promote evangelical spirit and social justice; the Catholic formation of children and teenagers (cf. cc. 793–796); and efforts to spread the message of the Gospel, with the collaboration of the faithful (cf. c. 781), to those who have stopped practicing or do not profess the true faith. Logically, the parish priest is not obliged to carry out personally each and every one of these tasks, but to see to it that they are done in the parish, keeping in mind its circumstances. Some of these tasks (e.g., the homily) will always have to be done by a priest or deacon (cf. c. 767 § 1); but others (e.g., the catechesis) should usually be done by lay faithful who have been properly trained (cf. cc. 774, 776, 780).

b) Regarding the ordinary means of sanctification, the parish priest must particularly strive for the Holy Eucharist's being the center of the parochial community (cf. c. 899); and that all the faithful reach the fullness of Christian life through conscientious and active participation in the sacred liturgy (cf. cc. 834–836), in the celebration of the sacraments (cf. cc. 840, 843), and in a life of prayer. The reference to frequent reception of the Holy Eucharist and the sacrament of penance is emphasized;

2. *Catechismus Romanus seu Catechismus ex Decreto Concilii Tridentini ad Parochos Pii Quinti Pont. Max. iussu editus*, critical edition under the direction of P. RODRÍGUEZ, *In Civitate Vaticana* 1989, pp. 9–10 (marginal summery of Paolo Manuzio in no. 10 of the *Praefatio* of the *Catechismus Romanus*). Also cf. CCC, 25.

3. Cf. J. CALVO, commentary on c. 528, in *Pamplona Com.*

for which it will be opportune that the parish priest, when he establishes the schedules for Mass and confessions in the parish, consider the most convenient times for the majority of the faithful; and likewise give consideration to the faithful who have difficulty with those schedules to participate in these sacraments (cf. cc. 918, 986 § 1).[4] Likewise explicit reference is made to the promotion of prayer, also in families, and to the duty of being on guard that abuses not be introduced into liturgical matters.

3. For its part, canon 529 contemplates the principal exigencies of diligent fulfillment of the parochial pastoral function, which configures what could be called the *pastoral behavior* of the parish priest. Thus, it is emphasized that the relationship between the parish priest and the faithful, although done in an *institutional* context, has a character eminently *personal*. By following the example of Christ: "Ego sum pastor bonus: bonus pastor animam suam ponit pro ovibus. Ego sum pastor bonus: et cognosco oves meas, et cognoscunt me meae" (Jn 10:11 and 14), the parish priest must know the faithful entrusted to him. He is not a mere ecclesiastical officer who is limited, obliged by the office he holds, to offer several services to one who lawfully asks for them.[5] He must, in contrast, like the Good Shepherd, go in search of the faithful, visit families, participate in their joy, anxiety, and pain. He will prudently correct those who depart from good behavior; he will care for the sick, especially the dying; he will dedicate himself with particular service to the poor and afflicted; and he will help all the faithful, especially married couples and parents, to fulfill their own duties, by fostering Christian life in the family.

Likewise significant is the role entrusted to the parish priest in the promotion of the proper function concerning the lay faithful in the mission of the Church, which is none other than "to strive so that the divine message of salvation may be known and accepted by all people throughout the world," and "to permeate and perfect the temporal order of things with the spirit of the Gospel. In this way, particularly in conducting secular business and exercising secular functions, they are to give witness to Christ" (c. 225). Thus, both the *secularization* and the *clericalization* of the laity must be avoided.[6] On the other hand, the parish priest must cooperate with the bishop and with the other priests of the diocese so that the faithful, living in parochial communion, feel at the same time to be members of the diocese and the universal Church (cf. c. 209). Likewise falling to the parish priest, though not expressly mentioned, is a special obligation of fostering priestly vocations (cf. c. 233).[7]

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4. Cf. J.C. PÉRISSET, *La Paroisse...*, cit., p. 124; P. URSO, "La struttura interna delle Chiese particolari," cit., pp. 476–477; S. ALONSO, "Los párrocos en el Concilio de Trento y en el Código de Derecho Canónico," in *Revista Española de Derecho Canónico* 2 (1947), p. 975.

5. Cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 38.

6. Cf. P. URSO "La struttura interna delle Chiese particolari," cit., p. 478.

7. Cf. J.L. GUTIÉRREZ, "Organización Jerárquica de la Iglesia," in *Manual de Derecho Canónico* (Pamplona 1991), p. 401.

4. All in all, canons 528–529 constitute a specific and operative manifestation, *institutionalized* in the office of the parish priest, and *personalized* in the parish priest,[8] of the principal obligations of the clerics (cf. cc. 273–289) and the rights relative to all faithful (cf. cc. 208–231). In this sense, it can be stated that the parochial community constitutes a basic and ordinary institutional context in which the relationships of justice, and of charity, are developed daily between the pastors of the Church and the rest of the people of God.[9] Around the ministry of the parish priest, which for being *canonically responsible* for the pastoral care of the parochial community he is at the service of the preaching of the word of God and the administration of the sacraments, both the hierarchical bond and the remaining relationships of justice that articulate the specific juridical dimension of the life of the Church are established *personally* and *tangibly*.

8. Cf. J. Hervada, *Diritto Costituzionale Canonico* (Milan 1989), pp. 188–190.
9. Cf. A. Borras, "La notion de curé dans le Code de droit canonique," in *Revue de Droit Canonique* 37 (1987), pp. 225–227.

530 **Functiones specialiter parocho commissae sunt quaesequuntur:**

1° **administratio baptismi;**
2° **administratio sacramenti confirmationis iis qui in periculo mortis versantur, ad normam can. 883, n. 3;**
3° **administratio Viatici necnon unctionis infirmorum, firmo praescripto can. 1003 §§ 2 et 3, atque apostolicae benedictionis impertiti;**
4° **assistentia matrimoniis et benedictio nuptiarum;**
5° **persolutio funerum;**
6° **fontis baptismalis tempore paschali benedictio, ductur processionum extra ecclesiam, necnon benedictiones extra ecclesiam solemnes;**
7° **celebratio eucharistica sollemnior diebus dominicis et festis de praecepto.**

The functions especially entrusted to the parish priest are as follows:

1° the administration of baptism;
2° the administration of the sacrament of confirmation to those in danger of death, in accordance with can. 883 n.3;
3° the administration of Viaticum and of the anointing of the sick, without prejudice to can. 1003 §§ 2 and 3, and the imparting of the apostolic blessing;
4° the assistance at marriages and the nuptial blessing;
5° the conducting of funerals;
6° the blessing of the baptismal font at paschal time, the conduct of processions outside the church, and the giving of solemn blessings outside the church;
7° the more solemn celebration of the Eucharist on Sundays and holy days of obligation.

SOURCES: cc. 462, 466 § 1, 938 § 2; SCCouncil Resol., 11 feb. 1928, SCDS Decr. *Spiritus Sancti Munera*, 14 sep. 1946, I (*AAS* 38 [1946] 352)

CROSS REFERENCES: cc. 262; 558–559; 566 § 1; 857 § 2; 858; 861–862; 883, 3°; 911; 1003 §§ 2–3; 1108–1112; 1177; 1219

COMMENTARY

Antonio S. Sánchez-Gil

1. While the general content of the pastoral function of the parish priest is stated in canons 528–529, here are indicated the *functions espe-*

cially entrusted to the parish priest. It is a new canonical formulation which the *CIC*/1917 established as *functions reserved to the parish priest* (cf. c. 462 *CIC*/1917) and which the majority of the former canonical doctrine to the first codification called *parochial rights*, and also *parochial functions*: namely, those acts of pastoral care that could only be required of the parish priest, and only the parish priest (or the priest who had his consent or delegation) could carry out within the parish, except when the law or ordinary provided otherwise.[1] Distinguished from *priestly functions* were parochial functions: namely, those acts that, by belonging to ordinary pastoral care, were not in the exclusive competence of the parish priest, and could also be exercised by other priests without the parish priest's consent and without the faithful having the obligation of going to the parish priest for them.[2]

All in all, the prior regulation established, through the institution of the *reservatio*, the exclusive competence of the parish priest over those acts of pastoral function that, for constituting an especially solemn exercise of the sanctifying function in the parish (cf. c. 528 § 2), have a greater importance in the life of each of the faithful and the entire parochial community. Nevertheless, this *reservatio* to the parish priest was also related to the economic aspects of the parochial ministry; for, in principle, the right to receive the offerings made by the faithful on the occasion of the exercise of parochial functions was also attributed to the parish priest, likewise in the case where it was another who would do it (cf. c. 463 § 3 *CIC*/1917). These economic rights of the parish priest were customarily called *stole fees* (see commentary on c. 531).

2. Nevertheless, in the drafting of the *CIC* the codifying Commission considered it important to do away with the idea of *exclusivity*, and insisted, rather, in the *special obligation* or *responsibility* of the parish priest,[3] by opting, in the end, for the present formulation, which is certainly "softer and more flexible" or "less limiting" than the prior Code.[4] Therefore, in its new canonical formulation the functions especially entrusted to the parish priest lose the character of rights personal and exclusive to the parish priest, and go on to be considered as functions that the parish priest, by virtue of his special *canonical responsibility*, must personally exercise whenever possible; otherwise, they must be carried out at least under his direct vigilance and in accordance with him. Consequently, it does not seem advisable that the parish priest, without just cause, habit-

1. Cf. F.X. WERNZ, *Ius Decretalium*, II, Rome 1906, pp. 679–681; B. DOLHAGARAY, "Curés," in *Dictionnaire de Théologie Catholique*, 3 (Paris 1908), col. 2448.
2. Cf. D. BOUIX, *Tractatus de parocho*, Paris 1867, pp. 432–433 and 490–499; E.F. REGATILLO, *Derecho parroquial* (Santander 1953), pp. 169–170 and 479.
3. Cf. *Comm.* 13 (1981), pp. 281–283.
4. Cf. J. CALVO, commentary on c. 530, in *Pamplona Com*; J.L. SANTOS, "Funciones especialmente encomendadas al párroco y problemas parroquiales," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), pp. 73–96 (p. 76).

ually charge other priests with the carrying out of those functions that are proper to his pastoral service and that show the special relationship that exists between the parochial community (and each one of its faithful) and their proper pastor.[5] In any case, because of the requirements for properly carrying out pastoral care and the necessary respect for the rights of the faithful, the canonical responsibility of the parish priest regarding the exercise of these functions in the parish remain not only when they are done personally but also when other priests participate.[6]

On the other hand, as the other provisions of the Code set forth, the juridical scope of this norm remains substantially unchanged and continues being necessary, with the particularities derived from the nature of each one of these functions, the consent or delegation of the parish priest so that the exercise by other priests is juridically lawful.[7] In this sense, it is meaningful that in his church "the rector of a church may not perform in his church the parochial functions mentioned in canon 530, 1°–6°, without the consent or, where the matter requires it, the delegation of the parish priest" (c. 558); and that "in the exercise of his pastoral office a chaplain is to maintain the due relationship with the parish priest" (c. 571), among which the functions mentioned in canon 530, 2°–3° (cf. c. 566 § 1) are included.

3. With respect to each of the functions especially entrusted to the parish priest, it can be useful to recall several specific provisions in other parts of the present Code.

a) Regarding the *administration of baptism* (1°), the obligation "to be baptized in the proper parochial church" is established as a general norm (cf. c. 857 § 2); and it requires due permission—in principle, from the parish priest or local ordinary—to baptize within a foreign territory (cf. c. 862).

b) Regarding *confirmation in danger of death* (2°), canon 883, 3° grants *ipso iure* the faculty of confirmation to any priest, without expressly requiring, by the nature of the case, the permission of the parish priest.

c) Regarding *the administration of viaticum* and *the anointing of the sick*, and the *imparting of the apostolic blessing* (3°), canon 1003 §§ 2–3 provides that, for reasonable cause, any other priest can administer the anointing of the sick, and also, logically, the apostolic blessing (cf. c. 468 § 2 *CIC*/1917) with the *consent*, at least presumed, of the priest

5. Cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 51; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 99.

6. Cf. B. DAVID, "Paroisses, curés et vicaires paroissiaux dans le Code de droit canonique," in *Nouvelle Revue Théologique* 107 (1985), pp. 860–861.

7. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 51; J. CALVO, commentary on c. 530, in *Pamplona Com.*

with the care of souls, especially, of the parish priest, and canon 911 extends the faculty of administering the viaticum to assistant parish priests and other priests with care of souls (chaplains, etc.); and, in the case of necessity, to any priest or other minister of holy community, with the permission, at least presumed, of such priests (who must subsequently *be notified*).

d) Regarding *assistance at marriages* and the *nuptial blessing* (n. 4°), it is important to recall that the only valid marriages are those which are contracted before the local ordinary or the parish priest, or a priest or deacon *delegated* by one of them, pursuant to canons 1108–1112.

e) Regarding *funerals* (5°) canon 1177 provides that they generally be celebrated in the proper parochial church, though it is allowed to choose another church with the consent of its rector and a mere *communication* given to the proper parish priest.

f) In relation to the *blessing of the baptismal font* at paschal time (6°), canon 858 provides that every parochial church must have a baptismal font; and that the local ordinary, after hearing the local parish priest in question, can allow or order that there also be baptismal fonts in other churches or oratories situated within the territory of the parish.

g) Finally, because of the special pastoral meaning and community importance of the *processions outside the church and the giving of solemn blessings outside the church* (6°), it is logical that presiding over them correspond personally to the parish priest; as well as *the more solemn celebration of the Eucharist on Sundays and holy days of obligation* (7°), although difficulties do not seem to exist for them to be carried out by other priests, with the agreement of the parish priest or ordinary.

531 **Licet paroeciale quoddam munus alius expleverit, oblationes quas hac occasione a christifidelibus recipit ad Massam paroecialem deferat, nisi de contraria offerentis voluntate constet quoad oblationes voluntarias; Episcopo dioecesano, audito consilio presbyterali, competit statuere praescripta, quibus destinationi harum oblationum necnon remunerationi clericorum idem munus implentium provideatur.**

Even though another person has performed some parochial function, he is to give the offering he receives from Christ's faithful on that occasion to the parish fund unless, in respect of voluntary offerings, there is a clear contrary intention on the donor's part; it is for the diocesan bishop, after consulting the council of priests, to prescribe regulations concerning the destination of these offerings and to provide for the remuneration of clerics who fulfil such a parochial function.

SOURCES: c. 463 § 3; *PO* 20, 21; *ES* I, 8

CROSS REFERENCES: cc. 222 § 1, 281 § 1, 551, 848, 946–947, 1181, 1260, 1264, 1267, 1272

COMMENTARY

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1. Before considering the present regulation of the *economic aspects of the parochial ministry,* it is important to recall that, according to the prior legislation, financial payments received on the occasion of exercising a parochial function had to be attributed to the parish priest, even when it was done by another (cf. c. 463 § 3 *CIC*/1917). These economic rights of the parish priest, customarily called *stole fees,*[1] corresponded, on one hand, to the consideration of parochial functions as *functions reserved to the parish priest* (see commentary on c. 530). And, on the other hand, they were a consequence of the benefice system, according to which both the *voluntary offerings* of the faithful and the *stole fees* served to make up the endowment of the benefice (cf. c. 1410 *CIC*/1917).[2]

1. Cf. J.H. PROVOST-R.A. HILL, "Stole Fees," in *The Jurist* 45 (1985), pp. 321–324.
2. Cf. D. SCHIAPPOLI-P.G. CARON, "Parrocchia," in *Novissimo Digesto Italiano*, XII (Turin 1982), p. 457.

Nevertheless, specific conciliar directions argued for, as is well known, the reform of the benefice system and the progressive implantation of a new regimen for the fair remuneration of the sacred ministries (cf. *PO* 20–21); with the objective of "separating the remuneration of the priests from ministerial acts, especially those of a sacramental nature."[3] Thus, the Code establishes in each diocese the creation of "a special fund which collects offerings and temporal goods for the purpose of providing, in accordance with canon 281, for the support of the clergy who serve the diocese, unless they are otherwise catered for" (c. 1274 § 1); and entrusts to the Bishops' Conferences the gradual incorporation into this fund the endowment of the existing benefices (cf. c. 1272).

In the application of these provisions, the CBS has provided for the creation of an Inter-diocesan Common Fund into which the endowment of the benefices will be incorporated, with the purpose of providing for the support of the clerics who render service in the diocese.[4]

2. On the other hand, as canon 222 § 1 states, "Christ's faithful have the obligation to provide for the needs of the Church, so that the Church has available to it those things which are necessary for divine worship, for works of the apostolate and of charity and for the worthy support of its ministers." And the competent authority can "determine the contributions that have to be made on the occasion of the administration of the sacraments and sacramentals" (cf. c. 1264, 2°). Consequently, such contributions can be considered as due offerings, not only for charity, but also in justice (cf. c. 1260); though, for evident reasons of a pastoral character, as the Code states on the subject of stipends, "even the semblance of trafficking or trading" must be avoided (c. 947); or that the most needy are deprived of parochial pastoral care because of their poverty (cf. cc. 529 § 1, 848, 1181).

3. Keeping in mind this new context, canon 531 is limited to stating several general criteria regarding the offerings of the faithful related to the carrying out of parochial functions. No longer are *stole fees* or *charges* spoken of, but of *offerings on the occasion of parochial functions*. These offering are no longer attributed to the one who carries out these functions (whether it is the parish priest or another person) but that they must be incorporated into the *parochial estate*. *Voluntary* alms—those that have not been determined by ecclesiastical authority and that are not

3. Cf. A. Sousa-Costa, commentary on c. 531, in *Commento al Codice di Diritto Canonico* (Rome 1985), p. 320.

4. Cf. CBS "Segundo Decreto General," August 25, 1985, arts. 9–15, in *BOCEe* 2 (1985), pp. 59–65; Id., "Decreto General sobre algunas cuestiones especiales en materia económica," August 25, 1985, arts. 1–2, in *BOCEe* 2 (1985), pp. 66–69. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

proper in strict justice—nevertheless, will not be put into the parochial estate when the contrary intention of the donor is clearly stated (cf. c. 1267 § 3).[5]

4. Finally, the determination of both the destination of these offerings and the compensation of the clerics who carry out this function is left to the norms that the diocesan bishop must issue, after consulting the council of priests (cf. c. 127 § 2, 2°). Therefore, regarding the nature, composition, and destination of the *parochial estate*, also called by canonical doctrine the *parochial common fund*,[6] the provisions of particular law will have to be followed. In principle, the ordinary expenses of the parish will be met by the parochial common fund, and, pursuant to the norms approved by the diocesan bishop, the maintenance of the parish priest and the other persons in the service of the parish should be provided for. On the other hand, it seems advisable that, besides the offerings of the faithful and possible income from other activities of the parish, those patrimonial goods that the parish, as a juridical person, has at its disposition to reach the pastoral goal proposed, should also be incorporated into the parochial common fund (cf. c. 114 § 3).

5. Cf. J.A. JANICKI, commentary on c. 531, in *The Code of Canon Law. A Text and Commentary* (New York 1985,) p. 428; L. DE ECHEVERRÍA, commentary on c. 531, in *Salamanca Com.*

6. Cf. F.R. AZNAR-GIL, "La administración de los bienes temporales de la parroquia," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), pp. 161–215.

532 In omnibus negotiis iuridicis parochus personam gerit paroeciae, ad normam iuris curet ut bona paroeciae administrentur ad normam cann. 1281–1288.

In all juridical matters, the parish priest acts in the person of the parish, in accordance with the law. He is to ensure that the parish goods are administered in accordance with cann. 1281–1288.

SOURCES: —

CROSS REFERENCES: cc. 118; 393; 515 § 3; 537; 543 § 2, 3°; 555 § 1, 3°; 1279 § 1; 1281–1289; 1480; 1524 § 2; 1741, 5°

COMMENTARY

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1. The parish, since it is a pastoral structure of the particular church made up of a certain community of faithful, has a public juridical personality (see commentary on c. 515). Because of his condition as pastor of the parish, the parish priest is responsible to it not only for the sacraments, liturgy, doctrinal formation, etc., but also for civil, administrative, and penal aspects. In effect, the function of being the *legal representative* of the parish in all the juridical affairs of the parish is attributed to the parish priest, similar to the situation of the diocesan bishop regarding the entire diocese (cf. c. 393). In the cases in which parochial pastoral care is jointly entrusted to several priests, representation corresponds only to the moderator (cf. c. 543 § 2, 3°). Therefore, pursuant to canon 118, only the parish priest—or moderator—can act in the name of the parish.

2. Likewise, the function of *administrator of the goods* of the parish is attributed to the parish priest. It is a consequence of the capacity of the parish to acquire, retain, administer, and alienate temporal goods (cf. c. 1255) and of the mission of governing it, which is assigned to the parish priest (cf. cc. 419, 1279 § 1). In contrast to juridical representation, whose exercise corresponds personally to the parish priest, regarding the administration of goods, the parish priest can, pursuant to particular law, entrust the direct management of the goods to another person, cleric or lay (cf. c. 1282), who has in the parish functions similar to those entrusted to the diocesan *financial administrator* (cf. c. 494). Moreover, to carry out this task, the parish priest has the help of the finance council (see commentary on c. 537) and of the vicar forane (cf. c. 555 § 1, 3°). Nevertheless, in every case the *canonical responsibility* of the parish priest

over the proper functioning of administration remains, which he cannot renounce (cf. c. 1289).[1] It should not be forgotten that the poor administration of temporal goods which seriously damages the Church constitutes one of the causes for which a parish priest can be lawfully removed (cf. c. 1741,5°). He must respect the provisions contained in canons 1281–1288, especially those that refer to extraordinary acts of administration, for whose validity the written authorization of the ordinary is required (cf. c. 1281 § 1).[2]

3. Likewise, it is for the ordinary to give the necessary authorization for the realization of those acts of representation that accompany acts of extraordinary administration (cf. c. 1524 § 2), as well as to assure the diligent fulfillment on the part of the parish priest of the functions as representative (cf. c. 1480) and as administrator (cf. c. 1279 § 1). These are functions he exercises from the time he takes possession of the parish until he ceases from office as a parish priest (cf. c. 538). Last, when the pastoral care of several parishes is conferred on a single parish priest (pursuant to c. 526 § 1) or on a group of priests (pursuant to c. 517 § 1), the due juridical and administrative autonomy of each advises the maintaining of, in principle, an individual representation and a separate administration of each one (see commentary on c. 526); though nothing hinders their being jointly administered in special circumstances with the agreement of the ordinary.

1. Cf. F.R. AZNAR-GIL, "La administración de los bienes temporales de la parroquia," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), p. 174; Idem, *La administración de los bienes temporales de la Iglesia. Legislación universal y particular española* (Salamanca 1984), pp. 197–199.

2. Cf. A. DE ANGELIS, "Note per l'amministrazione dei beni parrocchiali," in *Orientamenti pastorali* 32 (1984), pp. 113–126.

533 **§ 1. Parochus obligatione tenetur residendi in domo paroeciali prope ecclesiam; in casibus tamen particularibus, *si iusta adsit causa*, loci Ordinarius permittere potest ut alibi commoretur, praesertim in domo pluribus presbyteris communi, dummodo paroecialium perfunctioni munerum rite apteque sit provisum.**

§ 2. Nisi gravis obstet ratio, parocho, feriarum gratia, licet quotannis a paroecia abesse ad summum per unum mensem continuum aut intermissum; quo in feriarum tempore dies non computantur, quibus semel in anno parochus spirituali recessui vacat; parochus autem, ut ultra hebdomadam a paroecia absit, tenetur de hoc loci Ordinarium monere.

§ 3. Episcopi dioecesani est normas statuere quibus prospiciatur ut, parochi absentia durante, curae provideatur paroeciae per sacerdotem debitis facultatibus instructum.

§ 1. The parish priest is obliged to reside in the parochial house, near the church. In particular cases, however, where there is a just reason, the local Ordinary may permit him to reside elsewhere, especially in a house common to several priests, provided the carrying out of the parochial duties is properly and suitably catered for.

§ 2. Unless there is a grave reason to the contrary, the parish priest may each year be absent on holiday from his parish for a period not exceeding one month, continuous or otherwise. The days which the parish priest spends on the annual spiritual retreat are not reckoned in this period of vacation. For an absence from the parish of more than a week, however, the parish priest is bound to advise the local Ordinary.

§ 3. It is for the diocesan bishop to establish norms by which, during the parish priest's absence, the care of the parish is provided for by a priest with the requisite faculties.

SOURCES: § 1: c. 465 § 1; *CD* 30, 1
§ 2: c. 465 §§ 2, 3 et 5
§ 3: c. 465 §§ 4 et 5

CROSS REFERENCES: § 1: cc. 280, 283 § 1, 395, 410, 429, 550 § 1, 629, 1396
§ 2: cc. 283 § 2, 550 § 3
§ 3: cc. 541, 549

COMMENTARY

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1. Among the obligations implied by the office of parish priest, the *duty of residence* has been considered since ancient times as a direct consequence of the function of the care of souls.[1] As Barolomé Carranza (1503–1576) stated, "the pastoral ministry implies many things that necessarily require being personally present."[2] Therefore, the Code binds by law the residence of holders of offices that imply a special responsibility in pastoral care: the diocesan bishop (cf. c. 395), the coadjutor and auxiliary bishops (cf. c. 410), the diocesan administrator (cf. c. 429), the parish priest, and the assistant parish priest (cf. c. 550). Moreover, a serious breach of the obligation of residence by one who is subject to it by reason of an ecclesiastical office constitutes, pursuant to c. 1396, a canonical delict. Residence constitutes, therefore, a general obligation of the clerics of the diocese, though they do not have a *residential office* (cf. c. 283).

2. Because of his condition as pastor of the parochial community, the parish priest represents in it a visible instrument of unity. In fact, his habitual presence in the parish guarantees, through a tangible and suitable availability, his constant attention to the needs of the faithful, by allowing them to come to him at any time for any lawful request. It is clear that the pastoral needs of the faithful, by their direct repercussions on the salvation of souls, can be presented and must be attended to at any time of the day or night.

In the case of the parish priest the duty of residence is specified, as a general rule, in the obligation of dwelling in the *parochial house*, close to the church. Nevertheless, when there exists a good reason, the local ordinary can allow the parish priest to live in another place, as long as the pastoral care of the faithful is *properly and suitably* attended to; that is, by establishing methods that guarantee the permanent availability of the parish priest always to face his pastoral ministry.[3] In these cases, by incorporating an express conciliar direction (cf. *CD* 30), it is considered preferable that the parish priest reside in a common house for several priests (cf. c. 280). On the other hand, in the case of several *neighboring* parishes being entrusted to a single parish priest (cf. c. 526 § 1), it would be important that the local ordinary determine in which parish the resi-

1. Cf. Council of Trent, *sess.* XXIII, July 15, 1563, *Decreta super reformatione*, c. 1. Also cf. S. ALONSO, "Los párrocos en el Concilio de Trento y en el Código de Derecho Canónico," in *Revista Española de Derecho Canónico* 2 (1947), pp. 960–969.

2. B. CARRANZA, *Controversia de Necessaria Residentia personali Episcoporum et aliorum inferiorum pastorum* (Venetiis 1547), ch. 2, fols. 15–16.

3. Cf. D. MOGAVERO, "Il parroco e i sacerdoti collaboratori," in *La parrocchia e le sue strutture* (Bologna 1987), p. 139.

dency of the parish priest must be established, trying to choose, if possible, the parish most easily accessible to the faithful of the other parishes.[4]

3. Regarding the *absences* of the parish priest, expressly considered are those motivated annually for vacation, for a maximum period of continuous or divided month (cf. c. 283 § 2), and for spiritual retreats, which usually last a week (cf. c. 276 § 2, 4°). All in all, it is a matter of guaranteeing the parish priest several periods of rest necessary to recoup his energy and spiritual resources; for which they must be considered, not only as a lawful right, but also as a natural necessity which, except for a serious reason, cannot be done without. In this sense, particular law, pursuant to canon 279 § 2, can also provide for other periods of absence required for the permanent formation of the parish priest.[5] In any case, obvious reasons of order demand that for an absence from the parish of more than a week, the parish priest must inform the local ordinary. It is understood, as it seems logical and emphasized by the Code Commission itself,[6] that the end of this order (the necessity of informing the ordinary) is the parish priest being able to obtain the approval of the ordinary and at the same time being able to provide adequately for the needed pastoral care of the parish through the designation of a substitute priest.[7] On the other hand, the diocesan bishop has the competence to establish norms to regulate, according to the needs of each parish, the absences of the parish priest, and to determine the functions and faculties of the priest who *substitutes* for the parish priest (cf. cc. 541, 549).

4. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 107.

5. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 485; J.A. JANICKI, commentary on c. 533, in *The Code of Canon Law. A text and commentary* (New York 1985), p. 429.

6. Cf. *Comm.* 14 (1982), p. 225.

7. Cf. A. SOUSA-COSTA, commentary on c. 533, in *Commento al Codice di Diritto Canonico* (Rome 1985), pp. 321–323.

534 **§ 1. Parochus, post captam paroeciae possessionem, obligatione tenetur singulis diebus dominicis atque festis in sua dioecesi de praecepto Missam pro populo sibi commisso applicandi; qui vero ab hac celebratione legitime impediatur, iisdem diebus per alium aut aliis diebus per se ipse applicet.**

§ 2. Parochus, qui plurium paroeciarum curam habet, diebus de quibus in § 1, unam tantum Missam pro universo sibi commisso populo applicare tenetur.

§ 3. Parochus qui obligationi de qua in §§ 1 et 2 non satisfecerit, quam primum pro populo tot Missas applicet, quot omiserit.

§ 1. When he has taken possession of his parish, the parish priest is bound on each Sunday and holy day of obligation in his diocese to apply the Mass for the people entrusted to him. If he is lawfully impeded from this celebration, he is to have someone else apply the Mass on these days or apply it himself on other days.

§ 2. A parish priest who has the care of several parishes is bound to apply only one Mass on the days mentioned in § 1, for all the people entrusted to him.

§ 3. A parish priest who has not discharged the obligation mentioned in §§ 1 and 2, is as soon as possible to apply for the people as many Masses as he has omitted.

SOURCES: § 1: c. 466 §§ 1, 3 et 5; SCCouncil Resol., 5 mar. 1932 (*AAS* 25 [1933] 436–438), *SCCong* Decr. Litteris Apostolicis, 25 iul. 1970 (ASS 63 [1971] 943–944)
§ 2: c. 466 § 2; CodCom Resp. VI, 14 iul. 1922 (*AAS* 14 [1922] 528), SCCouncil Resol., 12 nov. 1927 (*AAS* 20 [1928] 84–87)
§ 3: c. 339 § 4

CROSS REFERENCES: § 1: cc. 388 §§ 1–2, 429, 519, 528 § 2, 530, 7°, 540, 543 § 2, 2°, 549, 901, 1244, 1246
§ 2: cc. 388 § 3, 526 § 1
§ 3: cc. 199, 3°, 388 § 4

COMMENTARY

Antonio S. Sánchez-Gil

1. Because of his sanctifying function in the parochial community (cf. cc. 519, 528 § 2) and, by virtue of the office received, as a determina-

tion of the faculty of celebrating the Mass, which is proper to every priest (c. 901) the parish priest has the *obligation of applying Mass for the people* that have been entrusted to him every Sunday and on feast days that, according to the universal or particular legislation (cf. cc. 1244, 1246), are holy days of obligation in the diocese. Paragraph 1 of the present canon substantially reproduces the norms that established the same obligation for the diocesan bishop (cf. c. 388); and that, in the present regulation, likewise is extended to the apostolic administrator (cf. c. 429) and parochial administrator (cf. c. 540).

In principle, this must be done personally and on the days provided; but Mass can be applied by another on those same days, or personally on other days, if there is a lawful impediment, such as sickness or a pastoral need to apply Mass for another reason.

Although nothing is expressly said in the present regulation, the possibility of receiving stipends for celebration of Mass which is applied for the people is excluded (cf. c. 945); since it is concluded, among other things, from the nature of the obligation to *apply* Mass for the people. This has been, in effect, the criterion traditionally followed in the Church;[1] and it was thus implicitly indicated in the *CIC*/1917 by its establishing the obligation for bishops and parish priests to celebrate Mass for the people "without exception, even for lack of payment" (cf. cc. 339 § 1, 466 § 1 *CIC* 1917). In fact, the local ordinary could grant permission to celebrate Mass for the people on days different from those stated by the law, for poor priests to whom had been offered on holy days a "big stipend."[2] Nevertheless, nothing hinders the faithful from making offerings on the occasion of the celebration of Mass for the people, which will be incorporated into the parish fund (cf. c. 531). On the other hand, the provisions of the decree of the *Casti connubii* do not seem to affect the Mass that is applied for the people, regarding the so-called *collective Masses*,[3] which, by omitting any reference to this subject, is directed rather to reforming several aspects of the discipline regarding stipends contained in canons 948 and 953.

Regarding the obligation to apply Mass for the people during absences of the parish priest, it is important to keep in mind that, pursuant to canon 549 *in fine*, the vicar who substitutes for the parish priest during his absences is not obliged to apply Mass for the people. Consequently, it is logical to suppose that, unless the particular law expressly provides otherwise, the parish priest remains obligated to apply Mass for the people of his parish on the days provided even during absences, which he can do

1. Cf. S. Alonso, "Los párrocos en el Concilio de Trento y en el Código de Derecho Canónico," in *Revista Española de Derecho Canónico* 2 (1947), pp. 969–974.

2. Cf. ibid., p. 970. Also cf. E.F. Regatillo, *Derecho parroquial* (Santander 1953), pp. 495–496.

3. Cf. CC, Decr. *Mos iugiter*, February 22, 1993, in *AAS* 83 (1991), pp. 443–446.

personally in his place of residence, or by means of a vicar, in his proper parish. In this sense, it is important to recall what was provided in the *CIC*/1917: "during lawful absences, the parish priest can apply said Mass, either himself in the place where he lives, or through a priest substituting for him in the parish" (c. 466 § 5 *CIC*/1917).

Regarding the place of celebrating Mass for the people, it is not expressly provided that it be done in the parochial church as, in contrast, was provided for by the prior legislation (cf. 466 § 4 *CIC*/1917). Nevertheless, pursuant to c. 530, 7°, it seems reasonable to consider this as customary; moreover, it is very advisable that the faithful who participate be conscious that Mass is being applied for them and the entire parochial community.[4]

2. Paragraph 2 refers to the case in which the pastoral care of several parishes is entrusted to only one parish priest (cf. c. 526 § 1), by establishing that the parish priest "is bound to apply only one Mass ... for all the people entrusted to him." The same can be said when the pastoral care of several parishes is conferred by the formula *in solidum* (cf. c. 517 § 1). As established by c. 543 § 2, 2°, priests of the group "are by common counsel to establish an arrangement by which one of them celebrates the Mass for the people."

3. By referring to the spiritual life of the faithful, the obligation of applying Mass for the people is not subject to prescription (cf. c. 199, 3°); for which, as is established in § 3, the parish priest who has breached this obligation must apply as many Masses as he has omitted *as soon as possible*. All in all, it is a matter of avoiding depriving the faithful who compose the parochial community of the spiritual fruits of the Sacrifice of the Mass, being considered as an integral and fundamental part of the *sanctifying function* (cf. c. 528 § 2) that parochial pastoral care implies.

4. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 486.

535 **§ 1. In unaquaque paroecia habeantur libri paroeciales, liber scilicet baptizatorum, matrimoniorum, defunctorum, aliique secundum Episcoporum conferentiae aut Episcopi dioecesani praescripta; prospiciat parochus ut iidem libri accuratea conscribantur atque diligenter asserventur.**

§ 2. In libro baptizatorum adnotentur quoque confirmatio, necnon quae pertinent ad statum canonicum christifidelium, ratione matrimonii, salvo quidem praescripto can. 1133, ratione adoptionis, itemque ratione suspecti ordinis sacri, professionis perpetuae in instituto religioso emissae necnon mutati ritus; eaeque adnotationes in documento accepti baptismi semper referantur.

§ 3. Unicuique paroecia sit proprium sigillum; testimonia quae destatu canonico christifidelium dantur, sicut et acta omnia quae momentum iuridicum habere possunt, ab ipso parocho eiusve delegato subscribantur et sigillo paroeciali muniantur.

§ 4. In unaquaque paroeciae habeatur tabularium seu archivum, in quo libri paroeciales custodiantur, una cum Episcoporum epistulis aliisque documentis, necessitatis utilitatisve causa servandis; quae omnia, ab Episcopo dioecesano eiusve delegato, visitationis vel alio opportuno tempore inspicienda, parochus caveat ne ad extraneorum manus perveniant.

§ 5. Libri paroeciales antiquiores quoque diligenter custodiantur, secundum praescripta iuris particularis.

§ 1. In each parish there are to be parochial registers, that is, of baptisms, of marriages and of deaths, and any other registers prescribed by the Bishops' Conference or by the diocesan bishop. The parish priest is to ensure that entries are accurately made and that the registers are carefully preserved.

§ 2. In the register of baptisms, a note is to be made of confirmation and of matters pertaining to the canonical status of Christ's faithful by reason of marriage, without prejudice to the provision of can. 1133, and by reason of adoption, the reception of sacred order, the making of perpetual profession in a religious institute, or a change of rite. These annotations are always to be reproduced on a baptismal certificate.

§ 3. Each parish is to have its own seal. Certificates concerning the canonical status of Christ's faithful, and all acts which can have juridical significance, are to be signed by the parish priest or his delegate and secured with the parochial seal.

§ 4. In each parish there is to be an archive, in which the parochial books are to be kept, together with episcopal letters and other documents which it may be necessary or useful to preserve. On the occasion of visitation or at some other opportune time, the diocesan bishop or his delegate is to inspect all of these matters. The parish priest is to take care that they do not fall into unauthorised hands.

§ 5. Older parochial registers are also to be carefully safeguarded, in accordance with the provisions of particular Law.

SOURCES: § 1: c. 470 § 1; SCPF Resp. 2, 14 mar. 1922; Pius PP. XII, Ap. Const. *Exsul Familia*, 1 aug. 1952, 35 § 2 (*AAS* 44 [1952] 700)
§ 2: c. 470 § 2
§ 3: c. 470 § 4
§ 4: c. 470 § 4
§ 5: Secr. St. Litt. circ., 15 apr. 1923; SCCouncil Normae, 24 maii 1939 (*AAS* 31 [1939] 266–268); Pontificium Consilium Ecclesiasticis Italiae Tabulariis Curandis, Instr. *A seguito*, 5 dec. 1960 (*AAS* 52 [1960] 1022–1025)

CROSS REFERENCES: § 1: cc. 895, 958, 1182, 1284 § 2, 1307
§ 2: cc. 877, 1054, 1121–1123, 1133
§ 3: cc. 1540 § 1, 1541
§ 4: cc. 486–488, 491 §§ 1 et 3, 555 § 1, 3°, 1284 § 2, 9°
§ 5: c. 491 §§ 2–3

COMMENTARY

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1. It is for the parish priest, as the director of parochial activity, to diligently keep up, care for, and order the books and documents of the parish. For this task he can have the help of other faithful (priests, deacons, and laity) who, under his vigilance and through a special charge or delegation, directly take care of documentary and administrative tasks of the parish; thus allowing him a greater devotion of time to more specifically pastoral tasks. It is necessary, in any case, for the parish priest and the persons who help him in the care of the parochial archive to have suit-

able preparation to carry out with professionalism and competence all that refers to the preservation, cataloguing, and consulting of the books and documents of the parish.[1]

2. In § 1 the *parochial books* that must be in each parish are stated. Only books of baptisms, marriages, and deaths are expressly mentioned; leaving to the determination of the Bishops' Conference or diocesan bishop the possibility of establishing others, like, for example, a book of confirmation (cf. c. 895) and one for the state of souls, formerly prescribed universally (cf. c. 470 *CIC*/1917). Nevertheless, other books prescribed in other parts of the Code are not mentioned, which for their nature, can be likewise considered obligatory for the parish; specifically, the book of Masses (cf. c. 958), the book of income and expenses for financial administration (cf. c. 1284 § 2, 7°), the book of pious foundations (cf. c. 1307) and, in the proper case, the book of catechumens (cf. c. 788 § 1). To these books, established as obligatory by canonical regulation, must be added, possibly, those books or registers established by civil regulations (e.g., on fiscal subjects) for those entities that have civil juridical personality.

Pursuant to this canon, the CBS has directed that "the norms, in effect until now, relative to parochial books, including the Book-Register of Confirmations such has been used in parochial practice" be followed.[2] For its part, the CBI has established that "in the parochial archive there be, besides the books considered obligatory by canon 535 § 1 and all those prescribed in canons 1284 § 2, 9° and 1307, the register of confirmations, the register of administration of goods, and the register of bequests," and "the register regarding the *status animarum*, the register of first communions, and the register of parochial chronicle are recommended."[3] Other Bishops' Conferences likewise expressly provided for the book of catechumens (e.g., in Chile and Nicaragua).[4]

Because of their character as public documents, the parochial books vouch for all that is directly and principally stated in them (cf. cc. 1540–1541); for which the *notation* must be realized with the greatest accuracy while observing the solemnities and directions prescribed for each case by the universal and particular law (cf. e.g., regarding the book of marriages: cc. 1081–1082, 1121, 1133, 1685, 1706; and, regarding the book of deaths: c. 1182). No longer is it required, as it was in the *CIC*/1917, that the

1. Cf. A. LONGHITANO, "Gli archivi ecclesiastici," in *Ius Ecclesiae* 4 (1992), pp. 649–667.
2. President of the CBI, "Decreto di promulgazione e delibere," December 23, 1983, nos. 6–7, in *Notiziario CEI* 7 (1983), p. 210.
3. President of the CBI, "Decreto di promulgazione e delibere," December 23, 1983, nos. 6–7, in *Notiziario CEI* 7 (1983), p. 210.
4. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al C.I.C.* (Milan 1990), pp. 159 and 483. (Editor's Note: For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.)

diocesan curia be sent a genuine copy of the parochial books (cf. c. 470 § 3 *CIC*/1917);[5] though particular law can prescribe it.

a) Regarding the book *of baptisms*, notations of which must be done in conformance with the provisions of c. 877, it is stated (§ 2) that, besides confirmation (cf. c. 895), there must be noted in it everything that concerns the canonical state of the faithful: marriage (cf. cc. 1122–1123, 1133), declaration of the nullity of the marriage and the possible prohibitions that could have been added (cf. c. 1685), the granting of dispensation *super rato* (cf. c. 1706), adoption (cf. c. 877 § 3), holy orders (cf. c. 1054), perpetual profession in a religious institute and change of rite. These circumstances must be stated on the *baptismal certificate.*

b) Regarding the *certificates* concerning the canonical state of the faithful and the other certificates that can have juridical effect, it is provided (§ 3) that they must bear the signature of the parish priest or his delegate, and the parochial seal. Pursuant to canon 1540 § 1, it is a necessary condition to be considered public documents.

c) In the *parochial archive* there must be conserved (§ 4) the parochial books, the letters from the bishops, and the other documents of the parish. Among those that have special importance are the documents and instruments in which the rights of the Church or parish in property are stated (cf. c. 1284 § 2, 9°). Pursuant to c. 491 § 1, an inventory or index of the documents contained in the archive must be made in duplicate, one copy to be sent to the diocesan archive. It is also required that the parish priest must take care to prevent the documents of the parochial archive from coming into the hands of strangers. By analogy, the provisions regarding the diocesan archive in cc. 486–488 can be applied to the parochial archive. Among other things, the archive must be locked, and only the parish priest and his delegate may have the key; no one is permitted to open it without their permission; all *interested parties* have the right to receive personally or by proxy, genuine copies of those documents that being public by nature refer to their personal status; and documents are not permitted to be withdrawn from the archive, unless it is for a short time and with the consent of the parish priest.[6]

d) Finally, § 5 refers to the special diligence with which the *older parochial books* must be conserved, pursuant to the dispositions of the diocesan bishop (cf. c. 491 §§ 2–3), who exercises his mission of vigilance on this subject through the review of the parochial archive on the occasion of canonical visitation (cf. c. 396), or whenever he considers it opportune. It is a task that the diocesan bishop can accomplish by himself or by a delegate, or by the customary collaboration of the vicar forane (cf. c. 555 § 1, 3°).

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5. Cf. J. CALVO, commentary on c. 535, in *Pamplona Com*; L. DE ECHEVERRÍA, commentary on c. 535, in *Salamanca Com.*

6. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 121.

536 **§ 1. Si, de iudicio Episcopi dioecesani, audito consilio presbyterali, opportunum sit, in unaquaque paroecia constituatur consilium pastorale, cui parochus praeest et in quo christifideles una cum illis qui curam pastoralem vi officii sui in paroecia participant, ad actionem pastoralem fovendam suum adiutorium praestent.**

§ 2. Consilium pastorale voto gaudet tantum consultivo et regitur normis ab Episcopo dioecesano statutis.

§ 1. If, after consulting the council of priests, the diocesan bishop considers it opportune, a pastoral council is to be established in each parish. In this council, which is presided over by the parish priest, Christ's faithful, together with those who by virtue of their office are engaged in pastoral care in the parish, give their help in fostering pastoral action.

§ 2. The pastoral council has only a consultative vote, and it is regulated by the norms laid down by the diocesan bishop.

SOURCES: § 1: *CD* 27; *ES* I, 16 §§ 1–3; *OChr* 6–12; *DPMB* 179, 204; *SDO* V, 25
§ 2: *CD* 27; *ES* I, 16 § 2; *OChr* 8, 10; *DPMB* 204

CROSS REFERENCES: § 1: cc. 212 §§ 2–3, 228 § 2, 511–513, 519
§ 2: c. 514

COMMENTARY

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1. In the image of the pastoral council of the diocese,[1] actively recommended by Vatican Council II (cf. *CD* 27) and regulated generally in canons 511–514, the possibility of constituting a *parochial pastoral council* is introduced into the Code.[2] It represents, no doubt, a significant institutional response to the teaching of Vatican Council II regarding the

1. Cf. J.I. ARRIETA, "El régimen jurídico de los consejos presbiteral y pastoral," in *Ius Canonicum* 21 (1981), pp. 566–605, J.M. DÍAZ-MORENO, "Los consejos pastorales y su regulación canónica," in *Revista Española de Derecho Canónico* 41 (1985), pp. 165–181; S. BERLINGÓ, "I consigli pastorali," in *L'Année canonique. Hors série* 2 (1992), pp. 717–744.

2. Cf. A. MARZOA, "Los consejos pastorales diocesanos e infradiocesanos," in *Derecho particular de la Iglesia en España* (Salamanca 1986), pp. 67–102; C. BONNICELLI, "Il consiglio pastorale parrocchiale," in *Orientamenti pastorali* 33 (1985), supplement to no. 12, pp. 5–33.

common responsibility of all the faithful in the life and mission of the Church, and regarding the mutual cooperation that must exist between laity and the pastors of the Church (cf. *LG* 32, 33, 37; *PO* 9; *AA* 10, 23–26). To specify these teachings, subsequent documents from the Holy See explicitly contemplated the possibility or advisability of constituting a pastoral council in the parish with a nature and function similar to those of the pastoral council of the diocese.[3]

In principle, it is a *facultative* institution, not required by universal law. Nevertheless, the Code provides that, if opportune, in the judgment of the diocesan bishop, after consulting his council of priests (cf. c. 127 § 2, 2°), a pastoral council will be constituted in each parish. From the literal provisions of the present canon, it can be concluded that the judgment regarding the advisability of constituting a pastoral council refers to each and every one of the parishes of the diocese. This institution, if thus considered by the diocesan bishop after consulting his council of priests, will be constituted (*constituatur*) in each parish, and will be able to be converted, therefore, into an *obligatory* institution under particular law.[4] It would also be appropriate to interpret this norm in the sense that the diocesan bishop must consider the opinion of the council of priests each time he must make a judgment regarding the advisability of constituting a pastoral council in a certain parish; for which, once such advisability is confirmed for that parish, the constitution of the pastoral council should be considered obligatory in that certain parish. Without excluding the validity of both interpretations, it seems, nevertheless, more appropriate to interpret this norm in the following way: the diocesan bishop must consider the opinion of the council of priests to evaluate the advisability of the constitution of parochial pastoral councils in a diocese; once that advisability is confirmed—which we could call *general*—it is up to the diocesan bishop, without afterwards needing to consult the council of priests, to determine the appropriate constitution of the parochial pastoral council in each specific parish.[5] In any case, it can be advisable and useful that it be the same parish priest who, considering the circumstances of the parish and assessing the help that he can receive through the participation of the faithful on the pastoral council, request its constitution and offer the diocesan bishop the necessary elements to make his judgment regarding the council's advisability and possible regulation.[6]

2. The parochial pastoral council has as its basic purpose to serve as an institutional channel for the collaboration of the faithful for the foster-

3. Cf. *SCCong*, circular letter *Omnes christifideles*, January 25, 1973, no. 12, in *EV* 4 (Bologna 1978), nos. 1902–1923; *DPMB*, 179 and 204.

4. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 498; C. BONICELLI, "La comunità parrocchiale," in *La parrocchia e le sue strutture* (Bologna 1987), pp. 110–111.

5. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), pp. 160–161.

6. Cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 111.

ing of pastoral activity. Therefore, it is an appropriate instrument of communion with the parish priest and with the others who participate through their office in the pastoral care of the parish.[7] Regarding its nature and the juridical effect of its acts, the Code limits itself to stating that the council has a merely *consultative* vote; leaving to particular law the task of establishing regulations and statutes that regulate its functioning. In principle, since it is a *consultative institution*, constituted so that the faithful collaborate with and help the parish priest through their advice on pastoral and apostolic subjects, it seems natural that its scope of action customarily transcend the juridical purviews understood in terms of competence or participation in the governance of the parish—which the law attributes to the parish priest, under the authority of the diocesan bishop—and is situated, rather, within the purview of the relationships of communion and mutual service that must exist between the parish priest and the other faithful that compose the parochial community.[8]

The same tenor is to be found in the *Instruction* of 1997, in its treatment of organs of collaboration within particular churches excerpted as follows, at *EdM*, article 5:

"These structures, so necessary to that ecclesiastical renewal called for by the Second Vatican Council, have produced many positive results and have been codified in canonical legislation. They represent a form of active participation in the life and mission of the Church as communion.

"§ 1. The norms of the Code with regard to the Council of Priests (*Presbyteral Council*) specify those priests who can be its members [and footnote 81 therein: 'Cf. cc. 497–498']. Because the Council of Priests is founded on the common participation of the bishop and his priests in the same priesthood and ministry, membership in it is reserved to priests alone [and footnote 82 therein: 'Cf. Second Vatican Council, Decree *Presbyterorum ordinis*, n. 7'].

"Deacons, non-ordained members of the faithful, even if collaborators with the Sacred Ministers, and those priests who have lost the clerical state or who have abandoned the Sacred Ministry do not have either an active or a passive voice in the Council of Priests.

"§ 2. Diocesan and parochial *Pastoral Councils* [and footnote 83 therein: 'Cf. *C.I.C.*, can. 514, 536'] and *Parochial Finance Councils* [and footnote 84 therein: 'Cf. ibid., can. 537'] of which non-ordained faithful are members, enjoy a consultative vote only and cannot in any way become deliberative structures. Only those faithful who possess the qualities prescribed by the canonical norms [and footnote 85 therein: 'Cf. ibid.,

7. Cf. L. SPINELLI, "Responsabilità partecipata dei laici al consiglio pastorale," in *L'Année canonique. Hors série* 2 (1992), pp. 827–831.

8. Cf. J.I. ARRIETA, "El régimen jurídico de los consejos presbiteral y pastoral," cit., pp. 603–605.

can. 512, §§ 1 and 3; *Catechism of the Catholic Church*, n. 1650'] may be elected to such responsibilities.

"§ 3. It is for the Parish Priest to preside at parochial councils. They are to be considered invalid, and hence null and void, any deliberations entered into (or decisions taken), by a parochial council which have not been presided over by the Parish Priest or which have assembled contrary to his wishes [and footnote 86 therein: 'Cf. *C.I.C.*, can. 536'].

"§ 4. Diocesan councils may properly and validly express their consent to an act of the bishop only in those cases in which the law expressly requires such consent.

"§ 5. Given the local situation Ordinaries may avail themselves of special study groups or of groups of experts to examine particular questions. Such groups, however, cannot be constituted as structures parallel to diocesan presbyteral or pastoral councils nor indeed to those diocesan structures regulated by the universal law of the Church in Canons 536, § 1 and 537 [and footnote 87 therein: 'Cf. ibid., can. 135 § 2']. Neither may such a group deprive these structures of their lawful authority. Where structures of this kind have arisen in the past because of local custom or through special circumstances, those measures deemed necessary to conform such structures to the current universal law of the Church must be taken.

"§ 6. The *vicars forane*, sometimes called deans, archpriests, or by suchlike titles, are those called 'assistant vicars,' 'assistant deans,' etc., must always be priests [and footnote 88 therein: 'Cf. ibid., can. 553, § 1]. The non-ordained faithful cannot be validly appointed to these offices."

Of particular importance is the insistence that these groups "cannot in any way become deliberative structures" (art. 5, § 2), and "... it is for the Parish Priest to preside at parochial councils," such that "any deliberations entered into (or decisions taken), by a parochial council which have not been presided over the by the Parish Priest or which have assembled contrary to his wishes" are invalid (art. 5, § 3).

Although it is important not to forget that the responsibility of helping and collaborating actively in the life and mission of the parochial community corresponds personally to *each* and *every one* of its faithful, whether or not belonging to the pastoral council;[9] it is necessary to state the indubitable usefulness that it implies to have available, at the heart of so profoundly communitarian a structure as the parish, a stable instrument for meeting and dialogue, in which the faithful, also *in common and*

9. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 125.

in an organic manner, offer their collaboration to the proper pastor.[10] The parochial pastoral council is, therefore, a particularly suitable place for the faithful, each one in a personal way, according to a personal condition, experience, and formation, to be able to exercise the right and duty of communicating to the parish priest and to the other faithful opinions regarding the pastoral needs of the parish and their possible solutions and, more generally, regarding everything that pertains to the good of the Church (cf. cc. 212, 519, 529 § 2). In this sense, it is an institution for *study and advice* for the fostering of pastoral activity, without special responsibilities in the coordination or control of the pastoral and apostolic activity of the parish, which are attributed rather to the parish priest (cf. cc. 519, 528–529), with the help of the vicar forane (cf. c. 394). For this reason, it would lack sense, also from a juridical point of view, to consider the parochial pastoral council, in dialectical terms, as an institution that substitutes for the parish priest in the management of the parish.[11]

3. Nothing is said about the procedure for determining its members, which particular law can establish with very diverse methods, according to the circumstances of each place. By analogy, the criteria of canon 512 for the members of the diocesan pastoral council can be considered as points of reference (Cf. *EdM*, art. 5 § 2 *in fine*): the members must be in full communion with the Church and be correct in their faith, have good habits and prudence (cf. c. 228 § 2).[12] Through the members, the parochial community must be truly reflected (*revera configuretur*).

Therefore, the pastoral council must be given a certain *representation* in the sociological sense, which is not identified with the juridical representation of the parish, which only corresponds to the parish priest (cf. c. 532), or with a representation in the democratic sense of the community of faithful.[13] Pursuant to the text of the present canon, the parish priest and those who participate through their office in the pastoral care of the parish are considered stable members of the pastoral council. As it was said before, it is for the parish priest to preside over the pastoral council, with all that the function implies: to establish the agenda, summon the council members, approve and put into effect the conclusions or suggestions of the council, etc.[14] Regarding the rest of its members, the majority of which should be lay, it seems opportune that they also have a

10. Cf. T.I. JIMÉNEZ-URRESTI, "Los consejos parroquiales de pastoral en España (1979–1990)," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), pp. 217–244.

11. Cf. R. PAGÉ, *Les Églises particulières*, II, cit., p. 125.

12. Cf. ibid., pp. 123–124.

13. Cf. T.I. JIMÉNEZ-URRESTI, "Los consejos parroquiales de pastoral...," cit., pp. 232-234; J.C. PÉRISSET, "La synodalité au niveau paroissial," in *L'Année canonique. Hors série 2* (1992), pp. 811–812.

14. Cf. P. URSO, "La struttura interna delle Chiese particolari," cit., p. 500. Cf. J.A. JANICKI, commentary on c. 536, in *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 432.

certain stability, for the purpose of fostering continuity of action. Therefore, the periodic renewal of its members should be done partially to avoid a situation where all the members lapse simultaneously.[15] On the other hand, nothing seems to hinder, and it even can be advisable, a more or less sporadic participation by other faithful who sincerely desire to participate and have the authorization of the parish priest; so that none feels exempt or excluded from collaborating in the work of the parish.

4. All in all, because it is a parochial institution of recent implantation in the life of the Church, it is necessary that both the parish priest and the faithful be persuaded of its usefulness and the exact dimension of its nature and tasks. In this sense, John Paul II has encouraged a "more convinced, extensive and decided appreciation for *parish pastoral councils*" (*CL* 27), citing, therefore, a significant conciliar test regarding its more accurate meaning: "The parish offers an outstanding example of community apostolate, for it gathers into a unity all the human diversities that are found there and inserts them into the universality of the Church. The laity should develop the habit of working in the parish in close union with their priests, of bringing before the ecclesial community their own problems, world problems, and questions regarding man's salvation, to examine them together and solve them by general discussion. According to their abilities the laity ought to cooperate in all the apostolic and missionary enterprises of their ecclesial family" (*AA* 10). In effect, only through the collaborative effort of all, in a spirit of service and without any desire for self-promotion, will the parochial pastoral council be a true instrument of communion (cf. c. 529 § 2) and a suitable help in the urgent work of evangelization entrusted to the parochial community.

15. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 62.

537 **In unaquaque paroecia habeatur consilium a rebus oeconomicis, quod praeterquam iure universali, regitur normis ab Episcopo dioecesano latis et in quo christifideles, secundum easdem normas selecti, parocho in administratione bonorum paroecia adiutorio sint, firmo praescripto can. 532.**

In each parish there is to be a finance committee to help the parish priest in the administration of the goods of the parish, without prejudice to can. 532. It is ruled by the universal law and by the norms laid down by the diocesan bishop, and it is comprised of members of Christ's faithful selected according to these norms.

SOURCES: cc. 1183, 1184, 1520 §§ 1 et 2, 1521 § 1, 1525 § 1; *PO* 17; *DPMB* 131

CROSS REFERENCES: cc. 222 § 1, 228 § 2, 492–493, 532, 1280, 1273–1289

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1. Following the conciliar direction regarding the help that the other faithful must render to the priests in the administration of the goods of the Church (cf. *PO* 17; *AA* 10), it is established that the parish priest, in exercising his function as the person canonically responsible for the administration of the goods of the parish (see commentary on c. 532), has the help of a *parochial finance committee*. Moreover, it is a specific application of what is prescribed in general for all the administrators of the ecclesiastical property of a juridical person (cf. c. 1280). Its constitution in each parish has, therefore, an *obligatory* character by universal law, in place of the *council of the fabric of the church* provided for in the *CIC*/1917 (cf. cc. 1183–1184 *CIC*/1917).[1]

2. The parochial finance committee is ruled, in the first place, by the norms established by the universal law; specifically, the provisions of the Code regarding the general administration of ecclesiastical property (cf. cc. 1273–1289) and by analogy, regarding the finance committee of the

1. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), pp. 64–65; D. SCHIAPOLLI-P.G. CARON, "Parrocchia," in *Novissimo Digesto Italiano*, XII (Turin 1982), p. 454.

diocese (cf. cc. 492–493). And, in the second place, by the regulations laid down by the diocesan bishop on financial subjects and by the ordinance or statute approved for its functioning. It will be, therefore, this ordinance that will determine, according to its nature and purpose, everything that refers to the composition of the financial committee, its internal organization, and the tasks that it must carry out.[2] As *EdM* has pointed out, the finance committee is a non-deliberative structure, in which non-ordained members "enjoy consultative vote only" (cf. art. 5, § 2; and see commentary on c. 536, which contains the entire text of art. 5).

3. Regarding its composition, it is important to state that the majority of the particular legislation in effect in the Spanish dioceses favors a relatively reduced number of members (between three and six) that can vary according to the needs of each parish.[3] Moreover, it seems to require a certain technical preparation in financial matters. Also for this reason, it is logical that the majority of the members are lay, with sufficient juridical and financial formation. However, because it is an institution of *ecclesial* character, and not merely technical, it is necessary that its members be known not only for their science but also for their integrity and prudence (cf. c. 228 § 2; *EdM*, art. 5 § 2 *in fine*).[4] In any case, it is important that the statutes clearly state the criteria and methods for their appointment, the duration of the mandate (cf. c. 492 § 2), etc. Specifically, and in an analogous way to how the membership of the diocesan finance committee is established, it seems opportune that particular law expressly exclude from the parochial finance committee relatives of the parish priest to the fourth degree of consanguinity or affinity (cf. c. 492 § 3).[5]

4. Regarding the tasks that it must carry out, since it is an institution conceived so that the faithful render help to the parish priest in the administration of the goods of the parish, a good part of the statutes of the parochial finance committees existing in Spain have different kinds of work: advising the parish priest on drafting budgets (the annual budget and those for parochial projects), and on everything referring to the planning for income and expenses of the parish; informing both the parish priest and the parochial community about the financial situation of the parish; stimulating the collaboration of the faithful in the financing of its needs;

2. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 131.

3. Cf. F.R. AZNAR-GIL, "La administración de los bienes temporales de la parroquia," in J. MANZANARES (Ed.), *La parroquia desde el nuevo Derecho Canónico* (Salamanca 1991), pp. 186–192.

4. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 501; J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), p. 175.

5. Cf. C. BONICELLI, "La comunità parrocchiale," in *La parrocchia e le sue strutture* (Bologna 1987), pp. 109–110; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), pp. 131–133.

and, in general, collaborating with the parish priest in the financial management of the parish. In relation to the acts of extraordinary administration, the statutes normally consider the favorable opinion of the parochial finance committee as a prior condition for the bishop to grant written permission to the parish priest for its validity (cf. c. 1281); it is a condition set by the diocesan bishop for the exercise of an act of his competence; for which, on the acts of extraordinary administration, the parochial finance committee can exercise a function of prior advisement not only for the parish priest, but also for the ordinary who must grant the authorization (cf. c. 127 § 2; cf. *EdM*, art. 5 § 4).

5. Regarding the internal organization of the council, the presidency of which falls to the parish priest (cf. *EdM*, art. 5 § 3), personally or by a delegate, the statutes can possibly establish, if the circumstances of the parish advise it, a certain distribution of functions among its members. In this case it can be advisable that the statutes specify what tasks must be carried out jointly by all the members of the committee, and what tasks are better entrusted to the parochial financial officer—if he or she exists—to the secretary, or treasurer. In principle, it seems preferable that the committee, as such, limit itself to the functions of advising, leaving to the aforementioned individuals, under the supervision of the parish priest, the functions of an executive character;[6] such as the carrying out of ordinary administrative acts (e.g., managing the income and expenses of the parish), drafting balance sheets and income statements, etc.

6. All in all, the parochial finance committee is not an institution that substitutes for the parish priest in the administration of the property of the parish, nor can it be considered as a true and proper *administrative council* for the parish. Its function is to help the parish priest in financial matters, as sensitive and necessary for the normal development of the pastoral and apostolic work of the parochial community. Even if it is certain that many times financial issues and pastoral issues are closely related (cf. cc. 114 § 3, 222, 1254),[7] they are subjects that require a different treatment; for which it seems important to preserve an autonomous functioning, with the opportune coordination of the pastoral council and the finance committee of the parish.

6. Cf. F.R. AZNAR-GIL, "La administración de los bienes temporales de la parroquia," cit., pp. 184–185.

7. Cf. L. DE ECHEVERRÍA, commentary on canon 537, in *Salamanca Com*; R. PAGÉ, *Les Églises particulières*, II, cit., p. 133.

538 **§ 1. Parochus ab officio cessat amotione aut translatione ab Episcopo dioecesano ad normam iuris peracta, renuntiatione iusta de causa ab ipso parocho facta et, ut valeat, ab eodem Episcopo acceptata, necnon lapsu temporis si, iuxta iuris particularis de quo in can. 522 praescripta, ad tempus determinatum constitutus fuerit.**

§ 2. Parochus, qui est sodalis instituti religiosi aut in societate vitae apostolicae incardinatus, ad normam can. 682 § 2 amovetur.

§ 3. Parochus, expleto septuagesimo quinto aetatis anno, rogatur ut renuntiationem ab officio exhibeat Episcopo dioecesano, qui, omnibus personae et loci inspectis adiunctis, de eadem acceptanda aut differenda decernat; renuntiantis congruae sustentationi et habitationi ab Episcopo dioecesano providendum est, attentis normis ab Episcoporum conferentia statutis.

§ 1. A parish priest ceases to hold office by removal or transfer effected by the diocesan bishop in accordance with the law; by his personal resignation, for a just reason, which for validity requires that it be accepted by the diocesan bishop; and by the lapse of time if, in accordance with the particular Law mentioned in can. 522, he was appointed for a specified period of time.

§ 2. A parish priest who is a member of a religious institute or is incardinated in a society of apostolic life, is removed in accordance with can. 682 § 2.

§ 3. A parish priest who has completed his seventy fifth year of age is requested to offer his resignation from office to the diocesan bishop who, after considering all the circumstances of person and place, is to decide whether to accept or defer it. Having taken account of the norms laid down by the Bishops' Conference, the diocesan bishop must make provision for the appropriate maintenance and residence of the priest who has resigned.

SOURCES: § 1: SCCouncil Resol., 11 nov. 1922 (*AAS* 15 [1923] 454–456); CodCom Resp. IX, 20 maii 1923 (*AAS* 16 [1924] 116); *CD* 31; *ES* I, 20 §§ 1–3; PCIDSVC Resp., 7 iul. 1978 (*AAS* 70 [1978] 534)
§ 2: *ES* I, 20 § 1; *MR* 58
§ 3: *CD* 31; *ES* I, 20 § 3; PCIDSVC Resp., 7 iul. 1978 (*AAS* 70 [1978] 534)

CROSS REFERENCES: § 1: cc. 184–196, 274 § 2, 522, 1336 § 1, 2°, 1740–1752
§ 2: c. 682 § 2
§ 3: cc. 185, 187–189, 281 § 2, 354, 384, 401–402, 411

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From the taking possession of office (cf. c. 527), the parish priest lawfully exercises the rights and obligations of the office of parish priest and has stability; thus he cannot cease without a just reason and pursuant to the methods established by the law (see commentary on c. 522). Canon 538 contemplates the most significant aspects of the *cessation from office* for the parish priest, the *final* moment of his ministry. Likewise, the general provisions regarding the loss of ecclesiastical office are applied to the cessation of the parish priest (cf. cc. 184–196).[1]

1. Paragraph 1 enumerates four *ways of cessation from office* for the parish priest, which respond to different reasons that can cause it:

a) *Removal* (cf. cc. 192–195): it is the loss of the office of parish priest decreed by the diocesan bishop by means of a procedure established in cc. 1740–1747. The reasons for removal, which must always be serious (cf. c. 193 §§ 1–2), are enumerated non-restrictively in c. 1741: in general, it is a matter of a situation that implies that the ministry of the parish priest is damaging or, at least, ineffective (cf. c. 1740). Removal can also occur *ipso iure*, but only for reasons expressly stated in c. 194 § 1; nevertheless, in these cases, so that the removal can be juridically required, an act of the diocesan bishop is always necessary (cf. c. 194 § 2). *Deprivation* of office, a special kind of removal as an expiatory penalty for the commission of a delict (cf. c. 1336 § 1, 2°), which likewise can be applied to the parish priest through the penal process provided in cc. 1717–1728,[2] upon the commission of one of the delicts that can be punished with this penalty (cf. cc. 1364 § 1, 1387, 1389, 1394 § 1, 1396, 1397), is not mentioned in this paragraph (cf. c. 196).

1. Cf. J.S. TEXEIRA, "Clergy Personnel: Policy and Canonical Issues," in *The Jurist* 45 (1985), pp. 502–520.

2. Cf. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), p. 94; R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), pp.135–136; P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), pp. 491–492.

b) *Transfer* (cf. cc. 190–191): this consists in the loss of the office of parish priest and the simultaneous appointment to another ecclesiastical office—including the office of parish priest of another parish—by decree of the diocesan bishop through the procedure provided for in cc. 1748–1752. As a general rule, the reasons for transfer are fundamentally pastoral: for the good of souls or the need or utility of the Church (cf. c. 1748). These do not imply, in themselves, a negative assessment of the ministry of the parish priest.[3] Likewise, a serious reason is not required, except if the transfer must be done against the will of the interested party (cf. c. 190 § 2). On the other hand, pursuant to c. 1336 § 1, 4°, there can also be a *penal transfer* of the parish priest through the penal process provided in cc. 1717–1728, as an expiatory penalty for the commission of a delict.

c) *Acceptance of resignation* (cf. cc. 187–189): this implies the loss of the office of parish priest upon the acceptance by the diocesan bishop of the interested party's petition. It must be motivated for a serious reason, for "unless excused by a lawful impediment, clerics are obliged to accept and faithfully fulfill the office committed to them by their Ordinary" (c. 274 § 2). Therefore, the diocesan bishop, before accepting the resignation of the parish priest, must evaluate its basis and the possible repercussions on the welfare of souls. For the acceptance to have effect it must be communicated in writing (c. 186) within a period of three months from the presentation of the resignation (cf. c. 189 § 3); otherwise it is considered tacitly refused. On the other hand, keeping in mind the scarcity of priests, it can be advisable, if circumstances permit, to transfer the resigning parish priest to another parish or another ecclesiastical office in which, once the reasons motivating his resignation are overcome, he can continue in his priestly ministry.

Similarly, and in relation to the situation of a priest experiencing penury, the 1997 *Instruction* states in article 4, § 2:

"§ 2. ... it must be noted that the Parish Priest is the Pastor proper to the parish entrusted to him [and footnote 77 therein: 'Cf. *C.I.C.*, can. 519'] and remains such until his pastoral office shall have ceased [and footnote 78 therein: 'Cf. ibid., can. 538, §§ 1–2'].

"The presentation of resignation at the age of 75 by a Parish Priest does not itself (ipso iure) terminate his pastoral office. Such takes effect only when the diocesan bishop, following prudent consideration of all the circumstances, shall have definitively accepted his resignation in accordance with Canon 538, § 3 and communicated such to him in writing [and footnote 79 therein: 'Cf. ibid., can. 186']. In the light of those situations

3. Cf. M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Turin 1985), p. 157; D. MOGAVERO, "Il parroco e i sacerdoti collaboratori," in *La parrocchia e le sue strutture* (Bologna 1987), p. 141.

where scarcity of priests exists, the use of special prudence in this matter would be judicious.

"In view of the right of every cleric to exercise the ministry proper to him, and in the absence of any grave health or disciplinary reasons, it should be noted that having reached the age of 75 does not constitute a binding reason for the diocesan bishop to accept a Parish Priest's resignation. This also serves to avoid a functional concept of the Sacred Ministry [and footnote 80 therein: 'Cf. CC, Directory for the Life and Ministry of Priests Tota Ecclesia (January 31, 1994, n. 44), n. 44']." (see commentary on c. 517 § 2).

d) *Notification of expiry of predetermined time* (cf. cc. 186 and 522): this implies the loss of the office of parish priest of one who was appointed, by virtue of the norms of particular law, for a determined time, through notification by the diocesan bishop that the predetermined time has passed. In this case, the expiry of the time constitutes the reason for the cessation of the office of parish priest; but this reason only effectively occurs when the diocesan bishop notifies him in writing (cf. c. 186). Meanwhile, though it is not expressly said, it seems logical, for reasons of juridical certainty, that the office of parish priest be considered tacitly extended. In any case, nothing hinders the diocesan bishop from deciding to renew the appointment of the parish priest for another determinate period of time or, likewise, appointing him for an indefinite time. In effect, the provision of canon 186 refers to the ecclesiastical office in general, and can be completed or incorporated in relation to the office of parish priest both by particular law issued by the Bishops' Conference upon allowing the possibility of the appointment of the parish priest for a determinate time, and by the diocesan bishop himself in the act of appointment (see commentary on c. 522).

According to the Spanish particular regulations, "pursuant to c. 522, the diocesan bishop can appoint parish priests for a determinate time, generally not less that six years, renewable *if required for the good of souls*."[4] Consequently, the Spanish diocesan bishops, before proceeding to the notification that makes cessation from office effective, must assess whether the good of souls *requires or does not require* the renewal of the appointment. The mere passage of time would not be sufficient reason for cessation; there would have to be reasons of a pastoral character. On the other hand, it is important that the diocesan bishop provide in the act of appointment, both the time period in which he must make the notification of the expiry of the predetermined time, perhaps three months, the time fixed by the Code for the acceptance of the resignation (cf. c. 189 § 3), and the method—implied or express—that will be followed for the possible re-

4. CBS, *Primer Decreto General*, July 7, 1984, art. 4, in *BOCEE* 1 (1984), pp. 95–104. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

newal. In this way, it is possible to avoid the parish priest's finding himself in a state of indefinite instability while awaiting notification of cessation or possible renewal (see commentary on c. 522), which could be upsetting to the parish priest and negatively affect pastoral service.[5] In fact the CBP, on establishing the possibility of appointing parish priests for a determinate time, not less than six years, has expressly instructed that "such appointment will be renewed automatically for another six years and so forth, as long as the bishop, for the good of souls, does not expressly provide otherwise, for at least two months before the term expires."[6]

2. For its part, § 2 states that the removal of the parish priest who belongs to a religious institute or society of apostolic life is regulated in conformance with c. 682 § 2: "The religious can be removed from the office at the discretion of the authority who made the appointment, with prior notice given to the religious Superior; or by the religious Superior, with prior notice being given to the appointing authority. Neither requires the other's consent." Therefore, it is an exception to the principle of stability for the parish priest, correlative to the exception to the principle of free conferral in the appointment of religious or members of societies of apostolic life for ecclesiastical offices in the diocese (cf. 682 § 1).[7] It is important to note that, both in c. 538 § 2 and c. 682 § 2, there is no express mention of the need for a serious reason or of the possibility for the interested party to present a recourse *in devolutivo* to the Apostolic See, as there was in *Ecclesiae Sanctae* I, 32. The codifying Commission considered it preferable not to specify anything regarding a reason by preserving the expression *ad nutum*; and it decided to omit the reference to the recourse *in devolutivo*, not only because it is no longer possible, but because it considered it unnecessary to say so explicitly.[8]

3. In § 3 the parish priest who has reached seventy-five years of age *is requested* to submit his resignation to the diocesan bishop. Therefore, it is an exhortative norm that does not imply a juridical duty.[9] It is in response to the express instruction of Vatican Council II: "Parish priests who on account of advanced years or for some other grave reason are unable to perform their duties adequately and fruitfully are earnestly requested to tender their resignation spontaneously, or when the bishop invites them to do so. The bishop will make suitable provision for the support of those who retire" (*CD* 31). And specifically, later, by Paul VI: "All

5. Cf. M. MORGANTE, *La parrocchia nel Codice...*, cit., p. 161.
6. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al C.I.C.* (Milan 1990), p. 566. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.
7. Cf. J.C. PÉRISSET, *La Paroisse...*, cit., p. 100.
8. Cf. *Comm.* 13 (1981), pp. 207–208.
9. Cf. B. DAVID, "Paroisses, curés et vicaires paroissiaux dans le Code de droit canonique," in *Nouvelle Revue Théologique* 107 (1985), p. 864; P. URSO "La struttura interna delle Chiese particolari," cit., p. 491.

parish priests are requested voluntarily to submit their resignation to their own bishop not later than the completion of their seventy-fifth year. The bishop having considered all the circumstances of place and person shall decide whether to accept, or defer acceptance of the resignation. The bishop shall make appropriate provision for the living and residence of those who resign" (*ES* I, 20 § 3). This formulation, with minor variations, has been incorporated into the present paragraph.

All in all, pursuant to the common rule for various ecclesiastical offices (cf. cc. 354, 401, 411), reaching the age of seventy-five is considered as a sufficient reason to request the parish priest to submit his resignation. In the opinion of some authors, it is presumed that this age is a just cause and appropriate for resignation;[10] or, according to others, that the parish priest is no longer suitable to run a parish.[11] In any case, the parish priest is not obligated to submit his resignation nor, in this case, is the diocesan bishop required to accept it. In effect, the diocesan bishop can accept or defer it, after having assessed the personal conditions of the parish priest and the circumstances of both the parochial community—whether it is large or small, whether or not there are other priests who can help him, etc.—and of the diocese, in particular whether there are other priests available to take charge of the parish (cf. *EdM*, art. 4 § 2). If the circumstances advise deferring the resignation for a time, it is important that the diocesan bishop notify the parish priest when and on what conditions it will be accepted; in principle, it seems unnecessary afterwards to submit a new resignation.[12] If, on the other hand, the diocesan bishop feels that he must accept the resignation, he must provide for proper maintenance and housing for the resigning parish priest (cf. cc. 281 § 2, 384) pursuant to the norms established by the Bishops' Conference.

Following the criterion stated by the CBS, in the Spanish dioceses *retired priests* for reasons of age or illness are guaranteed a pension from the dioceses that assures "a living standard equivalent to the rest of the priests."[13] Regarding *retirement age*, it is important to state the process of particular regulations presently in effect in Spain. Initially the CBS established: "From the completion of his seventy-fifth year, every priest may request retirement within the system of Social Security for Clerics; but it remains to the judgment of the bishop to process the application or to refuse to do so. The bishop can impose such retirement on priests who have completed their seventy-fifth year, without excepting any ecclesiasti-

10. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 145; J.C. PÉRISSET, *La Paroisse...*, cit., pp. 102–103.
11. Cf. J.M. DÍAZ-MORENO, "Párroco," in *Diccionario de Derecho Canónico* (Madrid 1989), p. 442; M. MORGANTE, *La parrocchia nel Codice...*, cit., p. 159.
12. Ibid.
13. Cf. CBS, *Primer Decreto General*, art. 6. Also cf. Id., *Documentación complementaria al Primer Decreto General*, art. 6, in *BOCEE* 1 (1984), pp. 114–121. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

cal office, even if conferred prior to the new Code of Canon Law."[14] This norm, promulgated on August 25, 1985, in view of the system of Social Security in effect in Spain—which prevented the retired priest from continuing in the performance of his office that he occupied—had previously received the approval and confirmation of the Holy See on June 8, 1985, with the specification that the faculties referred to by article 3, be granted *ad quinquenium*. This period having run, the CBS applied to the Holy See for the renewal of these faculties.[15] Renewal was granted by the CB, dated May 6, 1993, "for a period of three years"; stating, moreover, that "this extension is intended to grant a period of time sufficient for that Conference to reexamine the matter contemplated in the mentioned article not only under the financial aspect but regarding everything pertaining to the pastoral needs of that nation and in light of the universal legislation of the Church (cf. *CIC* c. 538 § 3). In this very time period, a written guarantee must be obtained of the Civil Administration of the State in which it is stated that no law is broken if the 'retired priest' continues in an *ecclesiastical office* beyond the age of his 'retirement' in the civil law (age 65)"; last, there were noted "the difficulties that the mentioned conditions can entail, keeping in mind the commitments contracted with the Spanish State, but regulations different from the present ones are necessary and which can definitively resolve the question."[16]

Subsequently, the Spanish state allowed the retired priest "to carry out pastoral activity by designation of the Ordinary, without receiving compensation for which"; and that "that non-compensated activity would not be incompatible with the receiving of the retirement pension." As a consequence, the CBS "respecting the common canonical legislation regarding retirement at seventy-five years of age, allows the possibility of the retirement of priests, in accordance with the civil law, at seventy-five years of age, and even supports its being requested, having the participation of the diocesan bishop, who will confirm in each case whether all of the necessary requirements are met, such that not only do the rights of the interested party remain protected, but also the pastoral interests of the diocese and the commitments with the civil authority."[17] This solution has

14. CBS, *Decreto General sobre algunas cuestiones especiales en materia económica*, August 25, 1985, art. 3, in *BOCEE* 2 (1985), pp. 66–69. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

15. CBS, *Renovación del Art. 3 del Decreto General de la Conferencia Episcopal Española sobre algunas cuestiones especiales en materia económica*, July 6, 1993, in *BOCEE* 10 (1993), pp. 151–152. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

16. CB, *Carta al Presidente de la Conferencia de Obispos de España*, May 6, 1993, in *BOCEE* 10 (1993), p. 152. For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

17. CBS, *Aprobación del Art. 3 del Decreto General de la Conferencia Episcopal Española sobre algunas cuestiones especiales en materia económica, acerca de la jubilación de los sacerdotes*, January 17, 1995, no. 5, in *BOCEE* (1995), pp. 51–54 (p. 52). For complementary norms promulgated by English language bishops' conferences, see Volume V, Appendix 3.

been incorporated into the new draft of article 3: "§ 1. The canonical retirement of priests will proceed according to the legislation provided in c. 538 § 3 for parish priests. § 2. This does not prevent that from seventy-five years of age and with the agreement of the diocesan bishop, priests claim the benefit of the civil law regarding retirement, as long as its requirements are met."[18] This norm, approved by the CBS on November 18, 1994, after having received on March 10, 1995 the *recognitio* and confirmation by the CB, was promulgated on April 18, 1995.

4. Finally, keeping in mind the scarcity of priests in numerous dioceses, it will be important, if possible, to invite the retiring parish priest to carry out several pastoral tasks suitable to his situation, thereby avoiding "a functional concept of the Sacred Ministry"of priests.[19] In this sense, it seems preferable to speak of *retired parish priests* rather than *retired priests*; for as John Paul II states: "those priests who by their advanced years can be called elderly and who in some churches make up the greater part of the presbyterate," have a "part which they are still called upon to play in the presbyterate, not only inasmuch as they continue—perhaps in different ways—their pastoral ministry, but also because of the possibilities they themselves have, thanks to their experience of life and apostolate, of becoming effective teachers and trainers of other priests" (*PDV* 77). Moreover, the retired parish priest can be given the title *emeritus* (cf. c. 185) as a token of gratitude and spiritual communion with the parish he had served as pastor for many years.

18. Ibid., no. 6.
19. *EdM*, art 4, § 2, *in fine*.

539 **Cum vacat paroecia aut cum parochus ratione captivitatis, exsilii vel relegationis, inhabilitatis vel infirmae valetudinis aliusve causae a munere pastorali in paroecia exercendo praepeditur, ab Episcopo dioecesano quam primum deputetur administrator paroecialis, sacerdos scilicet qui parochi vicem suppleat ad normam can. 540.**

When a parish is vacant, or when the parish priest is prevented from exercising his pastoral office in the parish by reason of imprisonment, exile or banishment, or by reason of incapacity or ill health or some other cause, the diocesan bishop is as soon as possible to appoint a parochial administrator, that is, a priest who will take the place of the parish priest in accordance with can. 540.

SOURCES: c. 429 § 1; 472,1°

CROSS REFERENCES: cc. 151, 153 § 1, 1741, 2°.

540 **§ 1. Administrator paroecialis iisdem adstringitur officiis iisdemque gaudet iuribus ac parochus, nisi ab Episcopo dioecesano aliter statuatur.**

§ 2. Administratori paroeciali nihil agere licet, quod praeiudicium afferat iuribus parochi aut damno esse possit bonis paroecialibus.

§ 3. Administrator paroecialis post expletum munus parocho rationem reddat.

§ 1. The parochial administrator is bound by the same obligations and has the same rights as a parish priest, unless the diocesan bishop prescribes otherwise.

§ 2. The parochial administrator may not do anything which could prejudice the rights of the parish priest or could do harm to parochial property.

§ 3. When he has discharged his office, the parochial administrator is to give an account to the parish priest.

SOURCES: § 1: c. 473 § 1; CodCom Resp. V, 14 iul. 1922 (*AAS* 14 [1922] 527–528)
§ 2: c. 473 § 1
§ 3: c. 473 § 2

CROSS REFERENCES: § 1: c. 539
§ 2: c. 428
§ 3: c. 1284 § 2, 8°

541 **§ 1. Vacante paroecia itemque parocho a munere pastorali exercendo impedito, ante administratoris paroecialis constitutionem, paroeciae regimen interim assumat vicarius paroecialis; si plures sint, is qui sit nominatione antiquior, et si vicarii desint, parochus iure particulari definitus.**

§ 2. Qui paroeciae regimen ad normam § 1 assumpserit, loci Ordinarium de paroeciae vacatione statim certiorem faciat.

§ 1. When a parish is vacant, or when the parish priest is impeded from exercising his pastoral office, pending the appointment of a parochial administrator the interim governance of the parish is to be undertaken by the assistant priest; if there are a number of assistants, by the senior by appointment; if there are none, by the parish priest determined by particular Law.

§ 2. The one who has undertaken the governance of the parish in accordance with § 1, is at once to inform the local Ordinary of the parish vacancy.

SOURCES: § 1: c. 472,2°
§ 2: c. 472,3°

CROSS REFERENCES: § 1: cc. 533 § 3, 539, 549
§ 2: c.539

COMMENTARY

Antonio S. Sánchez-Gil

1. Canons 539–541 contain several provisions whose goal is to avoid the parochial community not having its pastoral needs met when the *parish is vacant* or when the *parish priest* is prevented from exercising his pastoral function in the parish. Before analyzing the content of these provisions, it is important to state that both the vacant parish and the parish priest being prevented from exercising his office receive a similar treatment in the Code. In effect, for both cases, the duty of the diocesan bishop is established—or, likewise, of the diocesan administrator or of one who provisionally governs the diocese (see commentary on c. 525)—of providing a priest as soon as possible who will take the place of the parish priest, who is called *parochial administrator* (cf. cc. 539–540); and meanwhile, it is provided that a priest provisionally assumes the governance of the parish (cf. c. 541).

Nevertheless, it is important to keep in mind that this is a matter of situations that in practice pose very different pastoral and juridical treatment. While the *vacant parish* is determined by the death of the parish priest or his cessation pursuant to the provisions of law (cf. c. 538), *impossibility of the parish priest* can stem from very different circumstances, "imprisonment, exile or banishment, or by reason of incapacity or ill health or some other cause" (c. 539), which can cause different degrees of inability,[1] and which require a different treatment for each case (cf., e.g., for illness c. 1741, 2°), as well as "special care, since the person of the parish priest remains the officeholder"[2] and his lawful rights and interests must be respected. Consequently, for the case of impossibility of the parish priest, it is important to incorporate the provisions contained in these canons in the provisions of particular law and, especially, in what is established by the diocesan bishop, with canonical equity, in each case. Specifically, it is important that the diocesan bishop, as soon as he receives notice of the incapacity of the parish priest, take charge of the situation and expressly declare, if possible, the reason for this incapacity and the degree of inability caused, before designating a parochial administrator. In this sense it seems that the provisions of canon 541 should be understood so as to allow him to be informed of the circumstances of the case, and to avoid the parochial community not having the pastoral services of a priest while a decision is being made.[3]

2. Consequently, with the occurrence of the situation of a vacant or impeded parish, "the interim governance of the parish is to be undertaken by the assistant priest; if there are a number of assistants, by the senior by appointment; if there are none, by the parish priest determined by particular Law" (c. 541 § 1); and the obligation is imposed on the person who has been designated in this manner of "at once (*statim*) to inform the local Ordinary" (c 541 § 2) regarding the situation of the parish. This priest will *provisionally* carry out pastoral care, with the rights and obligations suitable to the circumstances of the case: in principle, if it is a situation of a vacant parish or the *total* inability of the parish priest, the provisions of c. 549 regarding the absence of the parish priest can apply: "If can. 541 § 1 is applied, the assistant priest is bound by all the obligations of the parish priest, with the exception of the obligation to apply the Mass for the people"; if otherwise, and if it is a matter of a situation of *partial* inability of the parish priest, what the local ordinary decides for each case must be

1. Cf. P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), pp. 493–494.

2. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 69. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), pp. 180–192; J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 109–110.

3. Cf. F. COCCOPALMERIO, *De paroecia*, cit., pp. 199–200.

followed. Otherwise, the provisions of c. 540 regarding the parochial administrator, with appropriate modifications, are also applicable (see below). This situation of *provisional status* is maintained "pending the appointment of a parochial administrator" (c. 541 § 1); which must be done as soon as possible (*quam primum*) pursuant to c. 539. In principle, nothing seems to hinder, in the case of a vacant parish, the diocesan bishop appointing another parish priest right away without the need to previously appoint a parochial administrator.[4] This is a preceptive solution, however, in the case of the incapacity of the parish priest, to keep him as the titleholder of the office of parish priest (cf. c. 153 § 1). Nevertheless, it can turn out to be prudent to designate a parochial administrator also in the case of a vacant parish, with the purpose of proceeding more calmly with the appointment of the new parish priest.

3. Regarding the *parochial administrator*, this is a new figure, in substitution of the two figures provided in the prior Code: the *assistant financial officer*, who was a priest who governed the vacant parish (cf. cc. 472–473 *CIC*/1917); and the *auxiliary* or *vicar regent*, who was the priest who helped or substituted for the parish priest unable for advanced age, mental illness, lack of skill, blindness, or other cause (cf. c. 475 *CIC* 1917).[5] The parochial administrator is a "a priest who will take the place of the parish priest" (c. 539) and who "is bound by the same obligations and has the same rights as a parish priest, unless the diocesan bishop prescribes otherwise" (c. 540 § 1), as it will be logical for him to do in the case of *partial* inability of the parish priest.[6]

The parochial administrator begins his function without the necessity of taking possession of office and during his administration he must avoid any damage to the rights of the parish priest and the goods of the parish (cf. c. 540 § 2). His function in the parish has a *provisional* character, until the vacancy is filled through the appointment of a new parish priest—which may not be delayed without a serious reason (cf. c. 151)—or until the incapacity of the parish priest ceases. All in all, "it is only a matter of a substitution and, therefore, of a temporary function that serves as a bridge for pastoral continuity in those circumstances in which the work would be interrupted until the new appointment of a parish priest or until the reincorporation of the present parish priest."[7] In any case, it seems opportune to specify that the parochial administrator lapses in his functions when the new parish priest takes office or when the impossibility of the present parish priest is ended, who will be reincorporated into

4. Cf. D. MOGAVERO, "Il parroco e i sacerdoti collaboratori," in *La parrocchia e le sue strutture* (Bologna 1987), p. 143; P. URSO. "La struttura interna delle Chiese particolari," cit., p. 493.

5. Cf. E.F. REGATILLO, *Derecho parroquial* (Santander 1953), pp. 523–532.

6. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), p. 142.

7. J.L. SANTOS, "Parroquia, comunidad de fieles," cit., p. 68.

the parish, a circumstance that, for reasons of juridical certainty, require that the diocesan bishop so declare expressly, if possible. Finally, the parochial administrator must account to the parish priest (cf. c. 540 § 3), which must be understood both in its technical sense, in relation to the administrative or financial aspects of his function (cf. c. 1284 § 2, 8°) and in a broader sense, in relation to the performance of the whole of the pastoral tasks during his period of substitution.

542 **Sacerdotes quibus in solidum, ad normam can. 517 § 1, alicuius paroeciae aut diversarum simul paroeciarum cura pastoralis committitur:**

1° praediti sint oportet qualitatibus, de quibus in can. 521;

2° nominentur vel instituantur ad normam praescriptorum cann. 522 et 524;

3° curam pastoralem obtinent tantum a momento captae possessionis; eorundem moderator in possessionem mittitur ad normam praescriptorum can. 527 § 2; pro ceteris vero sacerdotibus fidei professio legitime facta locum tenet captae possessionis.

The priests to whom, in accordance with can. 517 § 1, is jointly entrusted the pastoral care of a parish or of a number of parishes together:

1° must possess the qualities mentioned in can. 521;

2° are to be appointed in accordance with cann. 522 and 524;

3° obtain the pastoral care only from the moment of taking possession: their moderator is put into possession in accordance with can. 527 § 2; for the other priests, the profession of faith lawfully made replaces the taking of possession.

SOURCES: cc. 216 § 3, 453 §§ 1 et 2, 454 § 1, 459 §§ 1 et 3, 461, 1444 §§ 1 et 2; *CD* 31; *ES* I, 19 § 2; 20 §§ 1 et 2; SCCouncil Rescr., 2 maii 1967; *DPMB* 206

CROSS REFERENCES: cc. 517 § 1, 521–522, 524, 527, 833

543 **§ 1. Si sacerdotibus in solidum cura pastoralis alicuius paroeciae aut diversarum simul paroeciarum committatur, singuli eorum, iuxta ordinationem ab iisdem statutam, obligatione tenentur munera et functiones parochi persolvendi de quibus in cann. 528, 529 et 530; facultas matrimoniis assistendi, sicuti et potestates omnes dispensandi ipso iure parocho concessae, omnibus competunt, exercendae tamen sunt sub directione moderatoris.**

§ 2. Sacerdotes omnes qui ad coetum pertinent:

1° obligatione tenentur residentiae;

2° communi consilio ordinationem statuant, qua eorum unus Missam pro populo celebret, ad normam can. 534;

3° Solus moderator in negotiis iuridicis personam gerit paroeciae aut paroeciarum coetui commissarum.

§ 1. Each of the priests to whom the care of a parish or of a number of parishes together is jointly entrusted, is bound to fulfil the duties and functions of a parish priest mentioned in cann. 528, 529 and 530. They are to do this according to a plan determined among themselves. The faculty to assist at marriages, and all the faculties to dispense which are given to a parish priest by virtue of the law itself, belong to all, but are to be exercised under the direction of the moderator.

§ 2. All the priests who belong to the group:
1° are bound by the obligation of residence;
2° are by common counsel to establish an arrangement by which one of them celebrates the Mass for the people, in accordance with can. 534;
3° in juridical affairs, only the moderator acts in the person of the parish or parishes entrusted to the group.

SOURCES: § 1: cc. 462, 466 § 1, 467 § 1, 468, 469, 938 § 2; SCDS Decr. *Spiritus Sancti Munera*, 14 sep. 1946, I (*AAS* 38 [1946] 352); Paulus PP. VI, m. p. *Sacram Liturgiam*, 25 ian. 1964, III (*AAS* 56 [1964] 139–144); *SC* 35, 42, 52, 59; *IOe* 53; *UR* 11; *CD* 18, 30; *PO* 6–9; *EMys* 26
§ 2: cc. 339 § 4, 465 §§ 1–3 et 5, 466 §§ 1–3 et 5; *CD* 30, 1

CROSS REFERENCES: § 1: cc. 528–530
§ 2: cc. 532–534

544 **Cum cesset ab officio aliquis sacerdos e coetu, de quo in can. 517 § 1, vel coetus moderator, itemque cum eorundem aliquis inhabilis fiat ad munus pastorale exercendum, non vacat paroecia vel paroeciae, quarum cura coetui committitur; Episcopi autem dioecesani est alium nominare moderatorem; antequam vero ab Episcopo alius nominetur, hoc munus adimpleat sacerdos eiusdem coetus nominatione antiquior.**

When one of the priests, or the moderator, of the group mentioned in can. 517 § 1 ceases to hold office, or when any member of it becomes incapable of exercising his pastoral office, the parish or parishes whose care is entrusted to the group do not become vacant. It is for the diocesan bishop to appoint another moderator; until he is appointed by the bishop, the priest of the group who is senior by appointment is to fulfil this office.

SOURCES: c. 460 § 2

CROSS REFERENCES: cc. 184–196, 520 § 1, 526 § 2, 538–541, 1740–1752

COMMENTARY

Antonio S. Sánchez-Gil

1. *The parochial ministry "in solidum"*

Some specific aspects of the juridical-canonical regulation of the parochial ministry conferred *in solidum* to several priests, a method of entrusting the pastoral care of one or several parishes (see commentary on c. 517), are considered in cc. 542–544. In the present canons it is intended to adapt the regulations regarding parochial ministry to this specific case. It is important to anticipate that the particularity and novelty of the figure, joined to a certain indetermination of the provisions in question,[1] advise a special attention on the part of particular law, with the purpose of substituting for or completing the regulation of several aspects that, as will be seen below, seem to require greater normative determinations.

2. *Appointments*

Canon 542 provides three requirements for the appointment of the priests who compose the group:

a) They must be endowed of the qualities that configure *canonical suitability* for the office of parish priest, contained in c. 521 §§ 1–2 (see commentary on c. 521). It can be opportune, keeping in mind the particular characteristics of this form of entrusting pastoral care, to consider some important, specific qualities for the formula *in solidum.* It is important, for example, that all the priests have an aptitude to work in a group, and that the moderator, which is not an honorary title but one of service, has the necessary qualities for the management and coordination of the pastoral work of the group.

b) They will be appointed or instituted in accordance with the prescriptions of cc. 522 and 524. Therefore, all of them must be appointed *by the diocesan bishop,* who must beforehand form a *judgment regarding the suitability* of the candidates, *stating with certainty* this suitability pursuant to the method he has established for the case of the parish priest (cf. 521 § 3; see commentary on c. 524). Though not expressly stated, the designation of the moderator likewise falls to the diocesan bishop, pursuant to c. 544 (see below). On the other hand, all the priests of the group must have *stability,* because they cannot cease in their offices without

1. Cf. J.C. PÉRISSET, *La Paroisse. Commentaire des canons 515–572* (Paris 1989), pp. 205–207.

just reason and according to the methods established by the law for the case of the parish priest (cf. cc. 538, 1740–1752). In principle, it would not be a problem to follow the general rule of appointment for an indefinite time, with the possibility of appointment for a determinate time if the Bishops' Conference has allowed it for the parish priest (see commentary on c. 522).[2] Nevertheless, if such a possibility has been approved by the Bishops' Conference, and keeping in mind the rather exceptional character that recourse to the formula *in solidum* seems to have (see commentary on c. 517), it can also be correct, or even advisable, to customarily follow the inverse criterion, that is, to proceed, as a general rule, with an appointment for a determinate time for the priests of the group. This manner of proceeding is particularly indicated when it is possible to foresee that the circumstances requiring recourse to the formula *in solidum* in a specific case are provisional and temporary.

c) They take charge of pastoral care upon *taking possession of office*. The moderator is granted possession pursuant to the provisions of c. 527 § 2, while, for the other priests, the *profession of faith* lawfully made (cf. c. 833) takes the place of the taking of possession of office. It is a distinction motivated for reasons of simplicity, which does not prejudice the *substantial juridical equality* of all the priests of the group[3]; even though, in some measure, it supposes a confirmation of the position of *certain prevalence* of the moderator, who is *primus inter pares* in the group.[4] In contrast to what occurs in the text of c. 527, the profession of faith is expressly mentioned now, which in principle should be accompanied by the *oath of fidelity* established for the parish priest by the CDF (see commentary on c. 527). Nothing is said, however, about the *oath of good and faithful administration*, which the Code provides for those responsible for the administration of ecclesiastical property (cf. c. 1283, 1°). Keeping in mind that only the function of legal representative is expressly attributed to the moderator (cf. c. 543 § 2, 3°; see below), it seems logical to think, unless particular law provides otherwise, that all the priests of the group are *canonically jointly responsible* for the financial administration of the parish or parishes entrusted. Thus it would be necessary that all of them make such an oath. On the other hand, though it makes no specific reference to § 3 of canon 527, the instruction about the time in which taking of possession of office must take place, seems also applicable to taking possession of office by all the priests. Logically, keeping in mind the existence of a plurality of priests, the local ordinary should determine the time period for the taking possession of office by the moderator and for the profession of faith by the rest of the priests of the group.

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2. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," in *Nuevo Derecho parroquial* (Madrid 1988), p. 45.
3. Cf. ibid., p. 43.
4. Cf. *Comm.* 14 (1982), p. 222. Also cf. L. de Echeverría, commentary on cc. 542–543, in *Salamanca Com.*

3. *Functioning of the group*

For its part, c. 543 refers to the functioning of the group of priests in their performance of the functions of the parish priest. In § 1 it is directed that "each of the priests to whom the care of a parish or of a number of parishes together is jointly entrusted, is bound to fulfill the duties and functions of a parish priest mentioned in cann. 528, 529 and 530." Regarding the faculty of assisting at weddings and all the faculties of dispensation granted by the law to the parish priest, it is stated that "it behooves all of them, but they must work under the direction of the moderator" (see commentaries on cc. 528–530).

In § 2 reference is made to three questions that, being of diverse nature, receive a different treatment in each case:

a) All the priests that belong to the group are obliged to observe the law of residence. It is a provision that must be completed through particular regulations or as the local ordinary might provide in each case. Specifically, when the pastoral care of several parishes is conferred *in solidum*, various solutions can be adopted regarding the place of residence (the parochial house, pursuant to c. 533 § 1) according to the circumstance of each case. Whenever possible, it is important that a priest of the group reside in each entrusted parish, in furtherance of fostering pastoral service and his knowledge of the faithful (cf. c. 529 § 1).[5] In other cases, it can be preferable for all the priests to live together in one parish, looking for formulas that *suitably and efficaciously* guarantee pastoral care for the other parishes. On the other hand, it likewise seems opportune to adapt the dispositions of universal and particular law regarding absences of the parish priest (cf. c. 533 §§ 2–3) to the peculiarities of this figure; for it seems advisable that the absences of some priests of the group—or of the moderator himself—be covered by other priests of the group, in conformance with the norms established by the diocesan bishop (see commentary on c. 533).

b) The priests of the group "are by common counsel to establish an arrangement by which one of them celebrates the Mass for the people, in accordance with can. 534." This is a special case in the distribution of the tasks that is mentioned in § 1 of c. 543. As can be concluded from the text, all the dispositions of c. 534 would be applied to the priest in charge of celebrating the Mass for the people, including the provision contained in its § 3; that is, if he fails in that obligation without a lawful impediment, the priest himself must celebrate as many Masses for the people as he has missed as soon as possible. Nevertheless, it seems to be more in accord with the sense of the formula *in solidum* to establish by a provision of particular law that, in view of such a failure by the priest in charge, an-

5. Cf. J.C. PÉRISSET, *La Paroisse...*, cit., p. 196.

other priest of the group, likewise designated by common consent, be the one who as soon as possible celebrates as many Masses as might have been missed.

c) "Only the moderator represents the entrusted parish or parishes in juridical matters" (see commentary on c. 532). It is a determination that corresponds to the exigencies of juridical certainty in business affairs between the parish, as a juridical person, and third parties; and that nothing appears to affect the joint responsibility of all the priests of the group on the subject of administration of parochial property (see above). In any case, it can be important, in the cases where several parishes are entrusted to the group, that provisions of particular law determine with greater precision the functions of each priest in the administration of the goods of each entrusted parish, and his relationship with the respective parochial finance committees.

4. *Cessation of the members of the group*

Canon 544 states that the parish or parishes entrusted *in solidum* to a group of priests do not become vacant because of the cessation of one of the group, or of its moderator. In this last case, "it is for the diocesan bishop to appoint another moderator; until he is appointed by the bishop, the priest of the group who is senior by appointment is to fulfill this office." Therefore, the designation of who will perform, even though provisionally, the function of moderator is not left—as is the case, however, in other matters—to the common counsel of the priests of the group; but that a procedure is established *ipso iure* to determine one. Both juridical certainty, regarding the legal representation of the parish and the effective coordination of pastoral work (see commentary on c. 526) seem to require this. All in all, pursuant to this canon, the competence to appoint both the first moderator—though not expressly stated—and subsequent ones, is attributed to the diocesan bishop and not to the group—though logically, the diocesan bishop can ask their opinion.[6]

5. *The nature of joint action*

Last, it is important to state that canonical doctrine, from a comparative examination of the content of the present canons and of the formulation of c. 517 § 1, has led to various interpretations regarding the juridical classification of *joint action* and the kind of *responsibility* that is derived

6. Cf. R. PAGÉ, *Les Églises particulières. Tome II. La charge pastoral de leurs communautés de fidèles selon le Code de droit canonique de 1983* (Montréal 1989), pp. 151–154.

therefrom for the priests of the group. On one hand, it is important to keep in mind that the canon itself distinguishes various methods of functioning in the realization of the pastoral activity of the group of priests: several functions must be done *by some and by others* according to the distribution established *by themselves* (cf. cc. 543 § 1, 528–530); other functions fall to all of them but must be carried out *under the direction of the moderator* (cf. c. 543 *in fine*); others must be done *by only one priest* according to the procedure made by *common agreement* (cf. c. 543 § 2, 2°); others are accomplished by *the moderator alone* by disposition of the *law itself* (cf. c 543 § 2, 3°).[7] On the other hand, c. 517 § 1 states that pastoral care is entrusted *in solidum*, and that the moderator "directs the group activity and is responsible for it to the bishop." Nevertheless, nothing is said regarding the nature of the *group action*, nor is the manner in which the priests of the group are to come to a *common agreement* specified, nor what is the scope of the *direction of the moderator*. This can cause certain problems when on some occasions—as it is reasonable to expect—there is not unanimity among the priests of the group.

In response to this certain indetermination in the norm, some authors consider group action as an *in solidum* action, which must be accomplished according to the dispositions of c. 140 §§ 1 and 3, and that it would lead to an *in solidum responsibility*,[8] but *predetermined*,[9] of each one of the priests of the group. Others prefer to classify joint action as collegial action, which must be done according to the dispositions of cc. 140 § 2 and 119,2°–3°,[10] leading to a *collegial responsibility* of the entire group of priests.[11]

Consequently, keeping in mind the lack of agreement in the doctrine, it can be concluded that we are facing a *special form of joint action*, which causes a *special co-responsibility*, and whose *ways of actions* will be opportunely specified with greater normative determinations through particular law or more precisely, as has been prudently advised, through "a Statute or Ordinance issued by the bishop upon constituting one or several parishes under joint governance. In these statutes the *competences of the moderator* can be defined with greater accuracy, especially in the

7. Cf. ibid., pp. 33–37 and 144–150.
8. Cf. J.C. PÉRISSET, *La Paroisse...*, cit., pp. 185–189. Also cf. *Comm.* 8 (1976), pp. 29–30.
9. Cf. J. MIRAS, "El ejercicio 'in solidum' del ministerio parroquial," in *Ius Canonicum* 29 (1989), pp. 497–502.
10. Cf. A. VIANA, "El párroco, pastor propio de la parroquia," in *Ius Canonicum* 29 (1989), p. 477; B. DAVID, "Paroisses, curés et vicaires paroissiaux dans le Code de droit canonique," in *Nouvelle Revue Théologique* 107 (1985), p. 858; D. GARCÍA-HERVÁS, *Régimen jurídico de la colegialidad en el Código de Derecho Canónico* (Santiago de Compostela 1990), p. 49; P. URSO, "La struttura interna delle Chiese particolari," in *Il Diritto nel mistero della Chiesa*, II (Rome 1990), p. 460; J. CALVO, commentary on c. 517, in *Pamplona Com.* Also cf. *Comm.* 14 (1982), pp. 221–222.
11. Cf. J.L. SANTOS, "Parroquia, comunidad de fieles," cit., pp. 39–43.

cases in which there is not unanimous agreement among the team."[12] Regarding the statement that "the moderator is responsible to the bishop for the joint action," it seems that it should be understood in the sense that he is in charge of giving an account of the progress of the pastoral task entrusted to the group, but preserving not only the moderator but all and each one of the priests of the group, a proper sphere of responsibility, both to the faithful and the bishop.[13] All in all, each priest of the group is personally *responsible* for the work that has been attributed to him; but he is also *co-responsible* for the tasks that have been attributed to the rest of the priest of the group.

12. J.M. DÍAZ-MORENO, "Párroco," in *Diccionario de Derecho Canónico* (Madrid 1989), pp. 440–441. Also cf. A. BORRAS, "La notion de curé dans le Code de droit canonique," in *Revue de Droit Canonique* 37 (1987), p. 231.
13. Cf. R. PAGÉ, *Les Églises particulières*, II, cit., p. 37.

545 **§ 1. Quoties ad pastoralem paroeciae curam debite adimplendam necesse aut opportunum sit, parocho adiungi possunt unus aut plures vicarii paroeciales, qui, tamquam parochi cooperatores eiusque sollicitudinis participes, communi cum parocho consilio et studio, atque sub eiusdem auctoritate operam in ministerio pastorali praestent.**

§ 2. Vicarius paroecialis constitui potest sive ut opem ferat in universo ministerio pastorali explendo, et quidem aut pro tota paroecia aut pro determinata paroeciae parte aut pro certo paroeciae christifidelium coetu, sive etiam ut operam impendat in certum ministerium in diversis simul paroeciis persolvendum.

§ 1. Whenever it is necessary or opportune for the due pastoral care of the parish, one or more assistant priests can be joined with the parish priest. As cooperators with the parish priest and sharers in his concern, they are, by common counsel and effort with the parish priest and under his authority, to labour in the pastoral ministry.

§ 2. An assistant priest may be appointed either to help in exercising the entire pastoral ministry, whether in the whole parish or in a part of it or for a particular group of the faithful within it, or even to help in carrying out a specific ministry in a number of parishes at the same time.

SOURCES: § 1: cc. 475 § 1, 476 § 1; *CD* 30, 3
§ 2: c. 476 §§ 2 et 7

CROSS REFERENCES: cc. 383, 384, 394, 476, 516 § 2, 547, 548, 564

COMMENTARY

Juan Calvo

1. The *CIC* notably modifies the figure of the "assistant parish priests," which the *CIC*/1917 regulated with varied terminology and meaning. First, it does not provide a specific chapter for them, but introduces them directly on dealing with pastoral care in the parish. This must be classified as a prudent systematic exposition, under the title "De paroeciis, de parochis et de vicariis paroecialibus," with what is regulated

more suitably for both the parish, as an organizational and pastoral structure, and the stable office holders of its functions.

Since the conferral of the title of parish priest remains prohibited to a moral person, the juridical figure, as necessary of the current vicar as it is controversial, is suppressed: the priest who performed the ministerial functions that a moral person could not do (c. 471 *CIC*/1917). Likewise, in the *CIC* a new system of temporary substitution for the parish priest is established—for absences, illness, or prevention in office—and also the methods of appointment—provisional or stable—in the cases of vacant parishes; therefore, the figures of assistant financial officers, substitute or auxiliary, have been suppressed.

The basis for these suppressions, in the judgment of the codifying Commission,[1] lies in the fact that the variety of cases in which all—or only in part—the parochial functions are assumed do not require a plurality of figures. The mere denomination of assistant parish priest is sufficient, its situation being determined in each case.[2]

We must also note that the term *assistant* does not make reference to a *power* in a strict sense, but to a cooperation and participation in the *solicitude* of the parish priest—a special concept that encompasses the pastoral function or service in the parish. In this way, there is both a personal and institutional consideration of the assistant; that is, it is configured as an immediate help to the parish priest, such help being motivated by a limitation of the parish priest, or of the parish itself, for its complexity. In both cases the purpose that is intended is the appropriate parochial pastoral service. Thus it is shown that such *solicitude* cannot—in certain cases, at least—fall exclusively to an individual office holder and, on the other hand, the figure of the parish priest has several proper and irreplaceable features after its historical institutionalization. It is important to state that the proposal of including as one of the determining elements of the parish whose pastoral care was entrusted to the parish priest "una cum suis vicariis" was not accepted, since the analogy or parallelism to the bishop "una cum suo prebyterio" is not applicable to the parish priest. This decision was based on the fact that the assistants do not belong to the structure of the parish; they are not necessary—the reverse of what happens with the priest in the diocese.[3]

2. In § 1, first, the basis for the existence—necessary or advisable—of the parochial assistants is emphasized in a specific parish: pastoral care duly realized. From this its circumstantial character is inferred and the express permission that they can be several. Second, the object of their activity is generically configured: cooperation with the parish priest in the

1. Cf. *Comm.* 9 (1977), p. 258
2. Cf. *Comm.* 13 (1981), p. 148.
3. Ibid.

pastoral ministry (cf. c. 548 § 3). It is true that in this cooperation other clerics, religious, and lay can participate; but for the assistants—"qui vices gerunt"—the particular "missio canonica" converts that cooperation into something specific.

Moreover, the subordination to the authority of the parish priest, which is expressly provided for, must be another characteristic of the pastoral activity of the assistants. It is clear that a subordinated relationship "ratione ordinis" does not exist, but a relationship "ratione missionis." In any case, this does not affect the ownership and exercise of the rights and duties that correspond to the assistants as persons and as faithful.

The special union of criteria and of will between the parish priest and the assistants, as stated in canon 545 (cf. c. 548 § 3: "coniunctis viribus"), remains sufficiently emphasized with this generic expression. The more rigid formula of the schema of 1977: "concordi semper voluntate et coniunctis viribus"[4] was rejected by the Code Commission. The *mens legislatoris* is clearly shown in referring both to the authority of the parish priest and the necessary joint responsibility of the assistant in the scheduling and performance of the various pastoral labors, which is prudently expressed in canon 548 § 3, in stating that the parish priest and the assistants "simul sunt sponsores." For one author[5] it would be more appropriate to interpret the relationship between the parish priest and the assistants in light of the provisions for the parish ruled *in solidum* by several priests, by giving it, consequently, a certain parity among them; such opinion does not seem to us sustainable.

3. Paragraph 2, keeping in mind the intended purpose for instituting this juridical figure, presents a variety of situations—described with very generic though precise formulas—regarding the constitution of such assistants: for all or part of the pastoral ministry of the parish or for a specific ministry performed simultaneously for several parishes. Thus, there are provided four figures, whose specific determination is left to the diocesan bishop (c. 547):

a) The parochial assistant in the service of only one parish and without limitation of his ministerial activities, neither for reasons of territory nor persons. In conformance with the nature of such office and the office of parish priest, ordinarily it will fall to the parish priest to determine specifically the functions that the assistants should perform, for which they have a general assignment.

b) The parochial assistant for a specific part of the parish was already provided for in the *CIC*/1917 (c. 476 § 2). This figure is in response to the existence of parishes of large extension or dense concentration of

4. *Comm.* 13 (1981), p. 296.
5. Cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 218.

people in the parochial territory. Although the territorial element here has a prevalent character, it is obvious that it can also be interpreted as "pars paroeciae" according to personal criteria (e.g., service to certain families). Without doubt this is a method of pastoral service to which canon 516 § 2 refers, for those communities of faithful that cannot be established as parishes or quasi-parishes. The determination of the parochial part to which the assistant is ascribed *de iure* falls to the bishop to so state in the letters of appointment; this ascription can be merely *de facto*, in which case it is the parish priest who ordinarily assigns it to the assistant.

c) The parochial assistant for a certain group of faithful must distinguish himself from the prior case, and therefore, it seems applicable to only the faithful determined by some circumstance of a strictly personal nature: children, teenagers, the sick, etc. Otherwise, the figure of assistant would be "pro determinata paroecia parte," though without a territorial criterion. We do not think both figures are exclusive—at least not because they are delimited in the law. It will be for the particular legislation or the letters of appointment to make such a specification.

On the other hand, the provisions of canon 564 must be kept in mind, on entrusting the pastoral care of a community or group of faithful to a priest with the title of chaplain. The similarity is only apparent, given that the chaplain is a title not linked to a parish, though its pastoral functions—at least in part, as stated in canon 564—might be the same as parochial functions.

d) The title of parochial assistant for a specific ministry in several parishes offers a certain novelty and interpretive variety. First, the legislator has not restricted the existence of such assistant priests to the parishes of the same vicariate forane, even though it seems that the reasons for this new figure can be in the proposal of pastoral activities of a special nature for the various parishes which are united, at least principally, for reasons of vicinity.[6] It is obvious that the character of specific ministry for several parishes cannot be realized with autonomy with respect to the parishes, since, in this case, we would rather be in the presence of a kind of episcopal vicar "in certo negotiorum genere" (c. 476). Moreover, the specific ministry to which these assistants are assigned do not have a reason to signify an exclusion of other pastoral activities, nor should it be a matter of strict specialization; in any case, the generic case that is established in this norm allows—or demands—the subsequent determination on the part of the diocesan bishop.

There should not be avoided in the letters of appointment—or in the particular legislation—other aspects relative to the place of residence and

6. Cf. *Comm.* 13 (1981), p. 306.

compensation of these assistants and, especially, the performance of the activities (time, manner, etc.) in each one of the parishes. For such cases, besides the respective parish priests, it seems natural that the vicar forane and/or the episcopal vicar of the circumscription should participate, or, if there were one, the episcopal vicar of that specific ministry. It is, nevertheless, proper to the pastoral function of the bishop to attend solicitously to such needs of an ordinary or extraordinary character (cf. cc. 383, 384, and 394).

546 Ut quis valide vicarius paroecialis nominetur, oportet sit in sacro presbyteratus ordine constitutus.

To be validly appointed an assistant priest, one must be in the sacred order of priesthood.

SOURCES: c. 453 § 1

CROSS REFERENCES: cc. 149, 519, 521, 545

COMMENTARY

Juan Calvo

This canon emphasizes the requirement of being a member of the priesthood to be appointed validly as an assistant priest. Such presupposition is bound to the ministerial nature itself of parish priest, for which the assistants "vices gerunt." The expression used by the legislator is different from the one applied to the designation of parish priest; "assumatur," in the case of the parish priest, and "nominetur," in the case of the assistant priest. One author[1] finds the first formula more dynamically expressive, but its juridical meaning, in our opinion, is the same.

No other requirement is expressly prescribed, the published text omitting a second paragraph that existed in the schema of 1977. This referred to the necessity of being endowed with correct doctrine and good habits, besides the capacity and conditions for the specific pastoral tasks that must be carried out. The exigency of these requirements is obvious, already established generally in c. 149 for the appointment to ecclesiastical offices, for which the codifying Commission considered it superfluous to include them here.[2] Nevertheless, it could be adduced from § 2 of the cited c. 149, for the validity or invalidity of the appointment of assistants without such qualities; but the legislator did not consider it necessary. Likewise, everything stated in c. 521 § 2 referring to the qualities of a personal nature for the ministry and function of parish priest can be—or must be—applied here. Consequently, the personal conditions of the assistants will have to be determined, in each specific case, by the necessities of the parish or parishes for which they are appointed, according to the vicarial form chosen.

1. Cf. J.C. PÉRISSET, *La Paroisse* (Paris 1989), p. 213.
2. Cf. *Comm.* 13 (1981), pp. 294ff.

From the practical point of view, it is necessary to keep in mind that the figure of assistant priest is utilized—where a scarcity of priests does not hinder it—to complete the pastoral formation of the neo-presbyters. Therefore, not only must the purposes established in the prior canon be observed, but also the personal condition of the priests in their initiation into the administrative and ministerial responsibility of the parishes. Consequently, the requirement of being a member of the priesthood is a presumption for the appointment as assistant priest; but this makes possible, at the same time, a normal and suitable complement to his priestly formation, not in an occasional manner, but of a certain stability.

In any case, this express mention of the priesthood serves to specify a certain cooperation with the parish priest by the other priests, deacons, and faithful, provided in c. 519. Both the functions that are entrusted to the assistant priest and the complementary and immediate aspect of pastoral formation, imply an inseparable relationship between this office and the priesthood, which separates it from other parochial services.

547 **Vicarium paroecialem libere nominat Episcopus dioecesanus, auditis, si opportunum id iudicaverit, parocho aut parochis paroeciarum pro quibus constituitur, necnon vicario foraneo, firmo praescripto can. 682 § 1.**

The diocesan bishop freely appoints an assistant priest; if he has judged it opportune, he will have consulted the parish priest or parish priests of the parishes to which the assistant is appointed, and the Vicar forane, without prejudice to can. 682 § 1.

SOURCES: c. 476 § 3; SCCouncil Resol., 3 nov. 1920 (*AAS* 13 [1921] 43–46); *ES* I, 19 § 2; 30 § 2; PCIDSVC Resp., 13 iun. 1960 (*AAS* 72 [1980] 767)

CROSS REFERENCES: cc. 134 § 3, 479 §§ 1 et 2, 525, 545, 552, 555, 682 § 1, 738 § 2

COMMENTARY

Juan Calvo

The freedom and, therefore, the responsibility of the diocesan bishop in the appointment of the assistant priests appears expressly stated in this norm, calling for a consultation with the parish priest and the vicar forane by the proper bishop if he judges it opportune. The facultative character of the consultation—besides its non-binding nature, if it were to be done—does not interfere or limit the exercise of episcopal power. This criterion is corresponding to the doctrinal basis and determinations Vatican Council II stated regarding the autonomy of presiding over the governance of the diocese by the bishops. This requires an explanation.

On one hand, the legislator excludes the duty of consulting the parish priest which the *CIC*/1917 established (c. 476 § 3). The text of the proposed canon preserved this obligation with reference to the parish priest and made the phrase applicable only for a consultation with the vicar forane "si opportunum id iudicaverit." Nonetheless, there was unanimous agreement among the consultors to suppress the obligatory nature of that consultation, in all cases, leaving it to the prudent judgment of the bishop himself.[1] Coccopalmerio[2] concludes that the consultation with the vicar forane appears to be objectively opportune, unless—he says—the bishop obtains specific information in another way (through the episcopal vicar,

1. Cf. *Comm.* 13 (1981), pp. 294f.
2. Cf. *De paroecia* (Rome 1991), p. 234.

pastoral visitation, etc.). We think that this opinion was based on the correlative duty of the vicar forane regarding the coordination of pastoral activity and the service of the clerics in his district (c. 555 § 1, 1°–2°). Nevertheless, the legal text is sufficiently clear and broad, permitting the particular legislation of statutes to determine in each case the most specific ways to suitably appoint such offices. But, if that particular regulation does not exist, a judgment about the advisability and not the consultation—with the indicated parish priests and vicars forane or others—falls exclusively to the bishop.

Likewise, any right of presentation or choosing of the assistant priests is excluded by this canon. Nevertheless, there is no express revocation or reprobation of acquired rights that remain in effect or of lawful customs or particular laws, which—if they exist—would remain exercisable.

The only express limitation refers to the appointment of religious as assistant priests; in effect, c. 547 itself refers to c. 682 § 1, which requires the presentation or at least the prior consent of the superior. It should be noted that in principle only the method of presentation by the religious superior was proposed.[3] By virtue of c. 738 § 2, it is likewise applicable to the members of the societies of apostolic life.

By making express mention of the diocesan bishop and not of the ordinary, the competence of the vicar-general or episcopal vicar is limited, who, without a specific mandate cannot lawfully make such appointments (cf. c. 134 § 3 and c. 479 § 1–2). A different and expressly unresolved matter—for not being brought up—is that regarding the diocesan administrator. The legislator has foreseen the intervention of the diocesan administrator in the cases of lawful removal of assistant priests (c. 552), but it does not mention it for the granting of these offices. Nevertheless, the recognition of the competence of the diocesan administrator to appoint assistant priests seems to correspond to the *mens legislatoris*, since it is granted for the appointment of parish priests (c. 525), at least in certain circumstances. Thus, it is a matter of a clear case of a legal lacuna, which is easily resolved by analogy to parish priests, especially keeping in mind the lesser attribution of pastoral responsibilities granted to the assistants.

The autonomy that from the formal point of view configures, in these cases, the exercise of episcopal power does not exclude or attenuate the duty of holding the pertinent consultations that are seen as advisable and that correspond to the general duty expounded in *Presbyterorum ordinis* 7. Moreover, the principle of natural and canonical equity always will be present, with the pertinent effects in these appointments.

3. Cf. *Comm.* 13 (1981), p. 295.

548 **§ 1. Vicarii paroecialis obligationes et iura, praeterquam canonibus huius capitis, statutis dioecesanis necnon litteris Episcopi dioecesani definiuntur, specialius autem mandato parochi determinantur.**

§ 2. Nisi aliud expresse litteris Episcopi dioecesani caveatur, vicarius paroecialis ratione officii obligatione tenetur parochum in universo paroeciali ministerio adiuvandi, excepta quidem applicatione Missae pro populo, itemque, si res ferat ad normam iuris, parochi vicem supplendi.

§ 3. Vicarius paroecialis regulariter de inceptis pastoralibus prospectis et susceptis ad parochum referat, ita ut parochus et vicarius aut vicarii, coniunctis viribus, pastorali curae providere valeant paroeciae, cuius simul sunt sponsores.

§ 1. The obligations and rights of assistant priests are defined not only by the canons of this chapter, but also by the diocesan statutes, and by the letter of the diocesan bishop; they are more specifically determined by the direction of the parish priest.

§ 2. Unless it is otherwise expressly provided in the letter of the diocesan bishop, the assistant priest is by virtue of his office bound to help the parish priest in the entire parochial ministry, with the exception of the application of the Mass for the people. Likewise, if the matter should arise in accordance with the law, he is bound to take the place of the parish priest.

§ 3. The assistant priest is to report regularly to the parish priest on pastoral initiatives, both those planned and those already undertaken. In this way the parish priest and the assistant or assistants can by their joint efforts provide a pastoral care of the parish for which they are together answerable.

SOURCES: § 1: c. 476 § 6
§ 2: c. 476 § 6
§ 3: c. 476 § 7; *CD* 30, 3

CROSS REFERENCES: cc. 275, 528ff, 545, 549–552, 776, 851

COMMENTARY

Juan Calvo

1. With a prudent normative hierarchy, reference is made in § 1 to the sources from which spring, in degrees, the whole of the obligations and

rights of the assistant priests: the *CIC*, the particular law of the diocese, letters of appointment, and the directives or mandate of the parish priest or parish priests to whom their collaboration is ascribed. On stating first the duties and thereafter the rights, one more tendency is shown in consonance with the directives of the *CIC*—as indicated in part I of book II—though on occasion the stated inverse is utilized: rights and duties.

The term utilized for the first three sources—*CIC*, diocesan statutes, letter of appointment—has a constitutive character ("definiuntur"), while the parish priest, lacking in power, only can determine the acts or methods in which the help that the assistant must render ("determinantur") is specified.

In this canon and in the following ones, some of the obligations and some of the rights of the assistant priests are determined; but also, at least by analogous criteria, everything that the *CIC* itself establishes must be kept in mind regarding the parish priest and can be applicable, except that which is exclusive in the strict sense since only the parish priest is the officeholder of the parish ("paroeciae caput"). Even those rights and obligations pertaining to the parish priest can—or must—be exercised by the assistant in the cases of substitution foreseen by the law. From the most practical aspects, for a proper exercise of the rights and of the duties—as well as to avoid situations of conflicts—the document of appointment and the diocesan statutes must clearly fix the correlation between the function of the parish priest and that of the assistants, so that the former can *determine* the help that can be requested of the latter and that constitute the very nature of such offices.

It is necessary to distinguish in all the ministerial functions that the assistant priest can perform: those that correspond to any priest—with the general or special faculties granted by the law—and those that have a special connection with the parochial office, principally those mentioned in c. 530, in which the assistants participate, since their primary and specific obligation as such is to help "in the entire parochial ministry." Even the pastoral activities proper to their condition as priests, in their general consideration, acquire special nuances—susceptible to being converted into an obligation ex officio—given their specific designation as assistants. In such a sense must the activities referred to in cc. 528ff be interpreted, as well as the parochial collaborations regarding catechetical formation (c. 776), or baptismal instruction (c. 851).

2. Paragraph 2 makes an initial reference to letters of appointment, for in them a limitation can exist regarding the generic duty of dependency of the parish priest "in universo paroeciali ministerio." It is evident that only by this procedure can the kinds of assistants be configured for a certain part of the parish or for a certain group of faithful or, finally, for a particular ministry in several parishes. If this limiting specification were not to exist—or others of a special character that could be decreed by the diocesan bishop—the principle that prevails is that of the general obliga-

tions of the ministry of the parish priest, with the exception of the duty to apply the Mass "pro populo," the right of substitution being expressly stated, though with a limited character, that is, when established by law. It could be thought, in this last case, that the substitution could be ordinary and that it must be done "ad normam iuris": but rather this last expression must refer to, not the methods of substitution, but the cases of the substitution itself.

3. In § 3 the final formula "simul sunt sponsores" stands out, to signify the unity of mission that must exist between the parish priest and his assistants. It corresponds to the principles stated by Vatican Council II regarding the priesthood in general and the diocesan priesthood in particular, whose legal expression—not only exhortative—is found in c. 275.

The appropriate pastoral service of the parish—the basis of the office of the parish priest and the assistants—presides over the criterion and the strict obligation that the assistant not act autonomously, but always under the directives of the parish priest. This nonetheless must not hinder nor attenuate the pastoral initiatives of the assistants. On the other hand, though here only the dependence of the assistant in relation to the parish priest is emphasized, the union of intentions and criteria between both (see commentary on c. 545) postulates that the parish priest also make the assistant priest a participant in the pastoral initiatives and activities that he undertakes in the fulfillment of his own mission. The reason, thus, is triple:

a) for its basis: the stated generic unity in the priestly ministry;

b) for its purpose: the efficient pastoral care in the parish; and

c) for its juridical title: the co-responsibility derived from the specific "missio canonica" of the parish priest and of the assistants, who carry it out "simul sponsores" in that specific ministry.

549 **Absente parocho, nisi aliter Episcopus dioecesanus providerit ad normam can. 533 § 3, et nisi Administrator paroecialis constitutus fuerit, serventur praescripta can. 541 § 1; vicarius hoc in casu omnibus etiam obligationibus tenetur parochi, excepta obligatione applicandi Missam pro populo.**

When the parish priest is absent, the norms of can. 541 § 1 are to be observed, unless the diocesan bishop has provided otherwise in accordance with can. 533 § 3, or unless a parochial administrator has been appointed. If can. 541 § 1 is applied, the assistant priest is bound by all the obligations of the parish priest, with the exception of the obligation to apply the Mass for the people.

SOURCES: cc. 465 §§ 2, 3 et 5, 472,2°, 475 § 2

CROSS REFERENCES: cc. 533, 539, 540 § 3, 541

COMMENTARY

Juan Calvo

The provision for the absences of the parish priest and his temporary replacement by the assistant priest constitutes a case distinct from that of cessation or grave impediment, regulated by c. 541. The case of mere absence for a brief time should not be confused, in our opinion, with the other situations.

In this norm reference is made, at least ordinarily, to the times for vacations or spiritual retreat indicated in c. 533 in a general way, without concerning itself with the existence or non-existence of assistant priests. It is evident that, by analogy, the same will be applied to the situations of illness, though an absence in the literal sense may not occur; nevertheless, we think that in the cases of illness, more than a case of replacement, it will be a matter of functions that the ill parish priest himself entrusts to the assistant. Both the ordinary practice and the proper nature of the figure of assistant impose that in such lawful absences, provided for or not in the law with a definite character, it be the assistant—or the most senior in the office, if there are several—who ex officio substitutes for the parish priest in the pastoral obligations. Expressly excepted is the celebration of the Mass *pro populo*, given that it has a connection to the title of parish priest itself and only its performance is transferable to third parties, not its obligation.

In any case, the principle "sede vacante nihil innovetur" has to have application in these situations, as was directed in the codifying Commission when it rejected the proposal of one of its members, who preferred to include the express formulation of a substitution referring only to *ordinary* governance of the parish, which was considered a useless addition.[1] It is necessary, then, to make a harmonious and integrating interpretation of cc. 539, 541, and 549.

Canons 539 and 541, which perhaps could be converted into one canon, by stating the temporary attribution of faculties to the assistant priest—by determining which one, if there are several—refer to the irreversible situation (vacant parish) of a long and uncertain duration (impossibility of the parish priest to fulfill his obligations). By systematic congruence, c. 549 directly contemplates absences for a brief, determinate time. Nothing hinders the diocesan bishop, nevertheless, from appointing the assistant priest to parochial administrator, in the cases provided, precisely in consideration of his belonging to the parish. Prudence of governance will indicate this in each case, for both the modalities of the office of assistant and the personal or objective circumstances of the parish can advise against such appointment.

The obligations that the assistant assumes in the cases of substitution have a consideration more similar to that of the parochial administrators than to his ordinary functions, for which the provisions of c. 540 § 3 must be applied, referring to the duty to render an account to the parish priest of the special actions derived from such substitution.

1. *Comm.* 14 (1982), p. 228.

550 § 1. **Vicarius paroecialis obligatione tenetur residendi in paroecia aut, si pro diversis simul paroeciis constitutus est, in earum aliqua; loci tamen Ordinarius, iusta de causa, permittere potest ut alibi resideat, praesertim in domo pluribus presbyteris communi, dummodo pastoralium perfunctio munerum nullum exinde detrimentum capiat.**

§ 2. **Curet loci Ordinarius ut inter parochum et vicarios aliqua vitae communis consuetudo in domo paroeciali, ubi id fieri possit, provehatur.**

§ 3. **Ad tempus feriarum quod attinet, vicarius paroecialis eodem gaudet iure ac parochus.**

§ 1. The assistant priest is bound to reside in the parish or, if he is appointed for a number of parishes at the same time, in one of them. For a just reason, however, the local Ordinary may permit him to reside elsewhere, especially in a house common to several priests, provided the carrying out of the pastoral duties does not in any way suffer thereby.

§ 2. The local Ordinary is to see to it that, where it is possible, some manner of common life in the parochial house be encouraged between the parish priest and the assistants.

§ 3. As far as holidays are concerned, the assistant priest has the same rights as the parish priest.

SOURCES: § 1: c. 476 § 5; *CD* 30, 1c
§ 2: c. 134; *CD* 30, 1c
§ 3: c. 465 §§ 2, 3 et 5

CROSS REFERENCES: cc. 280, 533, 1396

COMMENTARY

Juan Calvo

The three paragraphs of this canon contain, successively, a duty, an exhortation, and a right: the duty of residence in the parish, the opportune and desirable common life of the parish priest and the assistant, and the right to vacation time.

1. *The obligation to reside in the parish*

Regarding the duty of the assistants to reside in the parish, the legislator refers only to the territory of the parish. Nevertheless, in the case of the parish priest the "domus paroecialis" is mentioned (c. 533 § 1). The proposal to the codifying Commission that this provision would also be included for the assistant priests was not accepted, considering that a strict obligation of residing in the parochial house could not always be observed.[1] It can be seen that the reason ("non semper adimpleri potest") for its rejection likewise could apply to the case of the parish priest; but, especially, this criterion fostered such a residence *de facto*. This criterion fits with the doctrine of Vatican Council II regarding the common life of the diocesan clergy, regarding especially the pastoral ministry. The validity and effectiveness of this reason perhaps has its most suitable expression in the ministerial relationship between the parish priest and his assistants.

The flexibility that this same reality imposes for the observance of this obligation is kept in mind by the legislator when he establishes that the local ordinary—therefore, also the episcopal vicars—can grant permission for the assistant priest to reside elsewhere ("alibi" here not only means something different from the "domus paroecialis," but, clearly, can mean a place outside the parish). A just reason—without the requirement of *a serious reason*—likewise indicates the facility of this concession considering reasons of advisability, especially the personal circumstances of the assistant. In any case, the limit that is stated for this concession is that it not prejudice or be detrimental to the performance of pastoral functions. Moreover, residence by reason of office is protected with penal guarantees that c. 1396 establishes.

2. *Common life*

Christus Dominus 30 and *Presbyterorum ordinis* 8 state several reasons or motives for the recommendation of common life for the diocesan clergy:

— to foster apostolic action,

— example of charity and unity,

— better performance of their spiritual and intellectual life,

— avoiding the dangers derived from loneliness.

This doctrine had its generic expression in c. 280. In relation to the parish priest and his assistants, an obligation is established for fostering

1. Cf. *Comm.*. 14 (1982), p. 228.

and overseeing this common life, which falls to the ordinary. On one hand, the *CIC* itself presents a dual attenuation of this mandate: where it might be possible and without requiring full common life. Regarding the first, where it is *prudent* is what is meant, since, if it is not possible at all, the precept is suspended. Regarding the second, in the prior schemata other terms were employed: "aliquod vitae consortium" and "consuetudo vitae communis in domo paroeciali,"[2] but its meaning cannot exceed the normal and advisable common life of those who have common tasks—with joint responsibility ex officio—and with the particular reference to their condition as diocesan priests united by that common parochial ministry, which the exhortative norm of canon 280 postulates as the most suitable condition.

The specific forms in which such common life can be expressed are not only several, but also variable, being adjusted to each circumstance; *Presbyterorum ordinis* 8 itself mentions as an example some of these manifestations.

All in all, it can be said that the content of this precept has an instrumental character, relating to the intended purposes, but not constituted in a mandate. On the other hand, the reality of urban parochial life—where the relationship between parish priest and assistants predominately occurs—offers or imposes that variety of forms in the observance of this tendential obligation.

3. *The right to vacation time*

Finally, the assistants are equivalent to the parish priest in the right to have a time for vacation, which is established in c. 533 § 2. Likewise in the case of the assistants this right is limited by the existence of serious reasons of a pastoral nature; but it does not seem that the requirement of notifying the local ordinary in cases of absence for more than a week should apply to them.

It is significant, for these purposes, that the legislator did not include mention of c. 533—which existed in the schema—and considered it sufficient to refer to the time lawfully available for vacation.[3] In the observance of this norm the provisions of particular law, as well as custom, will have to be kept in mind in particular.

2. Cf. *Comm.* 13 (1981), p. 297 and 14 (1982), p. 228.
3. Cf. *Comm.*. 13 (1981), p. 297.

551 **Ad oblationes quod attinet, quas occasione perfuncti ministerii pastoralis christifideles vicario faciunt, serventur praescripta can. 531.**

The provisions of can. 531 are to be observed in respect of offerings which Christ's faithful make to the assistant priest on the occasion of his exercise of the pastoral ministry.

SOURCES: c. 463 § 3; *PO* 20, 21; *ES* I, 8

CROSS REFERENCES: cc. 530, 531, 848, 945ff, 1181, 1385

COMMENTARY

Juan Calvo

The express referral to c. 531 establishes not only the subject matter, but also the formal mandate, relative to the offerings that the assistant priests might receive from the faithful on the occasion of pastoral ministry. It must be observed that the formula utilized by c. 551 differs from the text of c. 531, since the latter makes reference to the *munus paroeciale*—whose functions are indicated, though not in a taxative way, in c. 530—while the canon which mentions the vicars uses a more generic term: pastoral ministry. This can be a source of uncertainty, with the consequent conflict of opinions or obligations of conscience *ex iustitia*. Therefore it will be opportune to make a clarification or determination in the particular law itself. In any case, the term *oblationes* implies situations of a temporary nature, generally regulated in cc. 848 (administration of sacraments), 945ff (Mass stipends), 1181 (funeral rites), 1264 (fixing of taxes in the ecclesiastical province), etc. In the ministerial or administrative acts subject to fees, the purpose of the fees must be done in accordance with their being objectively fixed. Nevertheless, on the occasion of such acts the assistants can receive other offerings and, in such case, the wishes of the donor have preference; but if the character of the offering is not clearly stated—explicitly or implicitly—as being for the assistant, he must turn it over to the parochial patrimony. It is not reasonable to comprehend in this obligation the compensation—*not offerings*, therefore—that the assistants receive for other services or functions that they perform, though their title of action is their condition of assistant priest or, at least, it has been the assumption of their designation (e.g., teaching or attending functions).

552 **Vicarius paroecialis ab Episcopo dioecesano aut ab Administratore dioecesano amoveri potest, iusta de causa, firmo praescripto can. 682 § 2.**

Without prejudice to can. 682 § 2, an assistant priest may for a just reason be removed by the diocesan bishop or the diocesan Administrator.

SOURCES: c. 477 § 1; *ES* I, 32

CROSS REFERENCES: cc. 479, 522, 547, 682 § 2, 1740–1752

COMMENTARY

Juan Calvo

1. Canon 547 (see commentary) omits mention of the diocesan administrator for the making of a lawful appointment of the assistant priest. On the other hand, in c. 552 his competence is expressly stated in relation to cessation. In this regard, the inversion of these statements in the cases of appointment and cessation of the parish priests is surprising. For the latter it is indicated that they can be appointed by the diocesan administrator, and, in contrast, nothing is said about whether or not they can decide their cessation. We think that these divergences in treatment should not exist, although administrative practice itself can solve the doubtful situations that are presented in a lawful and efficacious way.

In the *schema* for revision, neither the vicar general nor the episcopal vicars had this faculty of revocation, unless it was granted by a special power. Such mention was suppressed by the codifying commission,[1] because in reality it was not necessary since it did not deal with a subject that the diocesan bishop, in such cases, could not delegate; consequently, simply c. 479 would apply.

2. The requirement for a just reason to legitimate the removal of the assistant priest could seem unnecessary, especially when the references to the *prudente arbitrio* and the "natural equity" that were contained in the *schema* were suppressed: " ... iusta de causa, prudenti eius arbitrio, naturali quidem aequitate servata..."[2] Certainly such a requirement generally corresponds to any act in the exercise of social power, though they might not be regulated in a specific way; but not only just reason, but also the other two requirements suppressed must be present in every act of lawful exercise of power. Perhaps the legislator wanted to subject the bishop and diocesan administrator to fewer formalities—not even the

1. Cf. *Comm.* 13 (1981), p. 297.
2. Ibid.

smallest that c. 547 establishes for appointment—to proceed to the removal or cessation of the assistants. The principles of natural (and canonical) equity and of governmental prudence do not need an express mention, but, evidently, they must be observed. Therefore, a consultation with the parish priest—or parish priests—and with the vicar forane, as well as the consideration *ad casum* of the pastoral ministry and of the personal well-being of the assistant and parish priest must be addressed in such a decision of diocesan governance. A list of causes capable of being made objective does not exist, not even of an indicative purpose; without a doubt, the nature itself of the office of assistant and the specific purposes that motivated his appointment, besides personal circumstances, must be their basis.

3. A different matter is the possibility of a challenge or appeal (against the removal), which is not under the protection of the law, the generic clause of *just reason* being only mentioned. Not even by analogy do the norms and procedures of recourse against the revocation (cc. 1740–1747) or transfer (1748–1752) of parish priests seem applicable.

4. The *CIC* says nothing regarding whether cessation can be pre-established in the appointment itself—that is, whether designation as assistant priest for a determinate time is appropriate. We believe that no legal reason exists against it and that special authorization is not necessary as it is in the case of parish priests (c. 522). By its own nature the function of parish priest requires a strict application of the element of stability, which does not correspond, at least generally or predominately, to the function of the assistants.

5. The only limitation of a formal nature that is established for the free decision of the diocesan bishop is the reference to the cessation of the religious assistant priest. In this case, as required by c. 682 § 2, the religious superior must be notified—a simple pre-notification is sufficient. On the other hand, if the removal is done by the religious superior, the authority to which the office belongs (diocesan bishop or diocesan administrator) must be notified by this superior. Set formalities are not required in this notification, nor its acceptance, nor even a prudential period of time, but it is evident that, if there is no concurrence of special circumstances, there must intercede, besides a just reason, a time between the notification and the cessation, so that the pastoral ministry can be provided for as well as the well-being of the assistant. Likewise, it seems advisable to indicate that to decide the cessation of a religious priest in his condition of assistant is not a function and competence proper to the religious superior, who cannot, obviously, make that appointment nor decide matters that pertain to the competence of the diocesan bishop. A different issue is that of deciding regarding the circumstances that affect the religious, in his condition as such, and that make impossible the performance of the functions that correspond to him as assistant, their being caused *a iure* or *ex necessitate* his cessation.

CAPUT VII
De vicariis foraneis

CHAPTER VII
Vicars Forane

553 **§ 1. Vicarius foraneus, qui etiam decanus vel archipresbyter vel alio nomine vocatur, est sacerdos qui vicariatui foraneo praeficitur.**

§ 2. Nisi aliud iure particulari statuatur, vicarius foraneus nominatur ab Episcopo dioecesano, auditis pro suo prudenti iudicio sacerdotibus qui in vicariatu de quo agitur ministerium exercent.

§ 1. The Vicar forane, known also as the dean or the archpriest or by some other title, is the priest who is placed in charge of a vicariate forane.

§ 2. Unless it is otherwise prescribed by particular Law, the Vicar forane is appointed by the diocesan bishop; if he has considered it prudent to do so, he will have consulted the priests who are exercising the ministry in the vicariate.

SOURCES: § 1: c. 445; *ES* I, 19 § 1
§ 2: c. 446; *DPMB* 187

CROSS REFERENCES: c. 374

COMMENTARY

Ernesto Cappellini

The Code of 1983 deals with the vicars forane (archpriests or deans) in chapter VII of title III, part II, book II, and devotes cc. 553–555 to them. The present placement of this material is little different from that of the *CIC*/1917, according to the system of the latter, which devoted cc. 445–450

to them. On the other hand, the perspective is notably different how each situates the office of vicar forane,[1] as we will see.

Canon 374 § 2 states: "Ad curam pastoralem per communem actionem fovendam plures paroeciae viciniores coniungi possunt in peculiares coetus, uti sunt vicariatus foranei." This canonical text does not require the grouping of several parishes into vicariates forane, while it does, however (c. 374 § 1), require the diocese to be divided into separate parishes.

The establishment of these territorial circumscriptions is left to the initiative of the bishop, according to the pastoral requirements of each diocese.

1. *History*

Likewise the history of the vicariates forane shows that their origin was more linked to practical exigencies than to doctrinal reflections. The diffusion of Christianity into the rural areas starting from the Fourth century required the constitution of extra-urban communities, with a priest in charge of the care of souls and their own church for meetings and worship. Around the mother church, endowed with a baptismal font, gradually grew new churches that were recognized as tied to and dependent on the head church.

In the Carolingian epoch, when the dioceses were divided into archdeaconates, this new subdivision was appearing. In the Eighth century we can consider these groupings of Christian communities as being established in the West around the head church, with the title of deaconates, vicariates forane, and archpriesthoods. The Decretals (*Liber* I, tit. XXIV) dealt with them to provide discipline to the institution, without prescribing their obligatory constitution.

The Council of Trent (*sess.* XXIV *De ref.*, c. 3, 20) dealt with the vicars forane, established their right to visit the parishes and fixed their competencies on the subject of matrimonial and criminal cases.

The *CIC*/1917 was the first universal law that provided discipline for the institution as a whole: c. 217 provided the obligation for its institution; in cases of special difficulty the bishop had the obligation of consulting

1. Regarding this institution in both Codes, the following bibliography may be consulted: O. FANELLI, *L'istituto dei vicari foranei* (Rovigo 1946); A. ARZA, "La figura jurídica de los vicarios de zona," in *Ius Populi Dei. Misecellanea in honorem Raymundi Bidagor* (Rome 1972), pp. 123–173; A. VIGANÒ, *La zona vicariale o decanato: un servizio pastorale nuovo* (Turin 1984); A. BALESTRERO, "Lo 'spazio' della parrocchia, oggi," in *La parrocchia e le prospettive del paese* (Naples 1983), pp. 21ff; M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico* (Cisinello-Balsam 1984), pp. 177ff; F. URSO, "I vicari foranei," in *La parrocchia e le sue strutture* (Bologna 1987), pp. 147–182.

the Holy See. In this way, the present legislation was prepared. On the other hand, the distribution and groupings of the parishes in urban centers, the seat of the bishop, are distinct, more articulated and more varied.

2. *The vicariate forane*

We have seen that c. 374 § 2 left the establishment of vicariates forane to the discretion of the bishop. This is done as a consequence of the eminently pastoral and apostolic function of the circumscription. In the *CIC*/1917 the vicariate forane, was to represent the bishop and to assure the ordered development of the Christian lives of the priests, religious, and laity. The figure of vicar forane was characterized by a particular disciplinary and inspecting function.

Canons 553–555 of the *CIC* have *DPMB*, 184–188 as their primary source.

Specifically in no. 187 we read: "The supra-parochial office of the vicar forane has a pastoral character, that is, not only juridical and administrative; it also has an important function. In effect, the vicar does not only have the obligation of vigilance, but also that of a true apostolic solicitude, as one who encourages the life of the local priest and one who coordinates the pastoral organization at the forane level, pursuant to the intentions and documents of Vatican Council II." Therefore, the vicariate forane is intended to be a structure of promotion for pastoral organization.

The history of the drafting of cc. 553–555 of *CIC* is rather complex and has seen modifications and suppressions until arriving at the final text; the statements of the study group in charge of this part is the authorized legislative history;[2] and a comparative study of the texts of the canons of the *schemata* of 1977 and 1980 would also prove useful.

Nevertheless, the norms of the Code are not enough to define the obligations and rights of the vicar forane and to specify the organizational structure and functioning of the vicariate: the legislator, following the principle of subsidiarity, makes explicit reference to the particular legislation. Thus, diocesan statutes that would respond to the need of each diocese are foreseeable.

2. *Comm.* 4 (1972), pp. 42–43; 12 (1980), pp. 283–284; 13 (1981), pp. 303–311; 14 (1982), pp. 303–314; 17 (1985), pp. 97 and 104.

3. *The vicar forane*

The vicar forane, also called dean or archpriest, is the priest appointed by the diocesan bishop—after having consulted, in his prudent opinion, the priests who practice their ministry in the place—and placed at the head of the vicariate forane.

The universal legislator has already left room for the criteria of his appointment in particular legislation. During the time of the commission for the drafting of the canons, the requirement of consulting the diocesan presbyteral council and pastoral council had emerged. The final decision was to refer them to the particular norms.

Consultation with the priests who live and work in the place is, no doubt, advisable, since it fosters the subsequent acceptance of an appointment regarding which agreement has been shown, in view of pastoral collaboration. In practice, the acts of particular legislation have established very diverse criteria: from direct election to the designation of short lists of candidates, or the mere expression of opinion, by way of reservation.

554 **§ 1. Ad officium vicarii foranei, quod cum officio parochi certae paroeciae non ligatur, Episcopus seligat sacerdotem quem, inspectis loci ac temporis adiunctis, idoneum iudicaverit.**

§ 2. Vicarius foraneus nominetur ad certum tempus, iure particulare determinatum.

§ 3. Vicarium foraneum iusta de causa, pro suo prudenti arbitrio, Episcopus dioecesanus ab officio libere amovere potest.

§ 1. For the office of Vicar forane, which is not tied to the office of parish priest of any given parish, the bishop is to choose a priest whom, in view of the circumstances of place and time, he has judged to be suitable.

§ 2. The Vicar forane is to be appointed for a certain period of time, determined by particular Law.

§ 3. For a just reason, the diocesan bishop may in accordance with his prudent judgement freely remove the Vicar forane from office.

SOURCES: § 1: c. 446 § 1; *ES* I, 19 § 1; *DPMB* 187
§ 2: *ES* I, 19 § 2; *DPMB* 187
§ 3: c. 446 § 2; *ES* I, 19 § 2; *DPMB* 187

CROSS REFERENCES: cc. 145–156

COMMENTARY

Ernesto Cappellini

Canon 554, in its three paragraphs, regulates the selection and appointment of the vicar forane.

Ecclesiae sanctae 19 enumerated the qualities of the priest who was to be appointed to that office in these terms: "Those priests known for their science and apostolic zeal are called to perform this office, such that, endowed by the bishop with the necessary faculties, they can promote and appropriately direct a joint pastoral action in the territory to whom it is entrusted. For that reason, this office is not tied to any given parish."

The legislator had in mind the dictates of *Ecclesiae sanctae* so as to abandon the historical inheritance of the centuries: no longer will it be obligatory to appoint the parish priest as vicar forane of the parish in whose church there was originally the baptismal font, but the suitability of

the priest will have to be kept in mind according to the functions that he must perform.

It is the bishop who must decide regarding the suitability, which comes from the sum of qualities that will allow the priest in question to be classified as an "eldest_brother" to his brothers. He will have social and spiritual gifts, general knowledge, organizational capacity, and pastoral experience. From this group of qualities flows the esteem with which he must be surrounded to accomplish his mission. And all these considerations require that the appointment not be connected to any given parish.

The appointment is for a determinate time (five years, three years, etc.), pursuant to particular law. This can avoid disciplinary intervention in cases of failure to fulfill his obligations, and allows the renewal of the appointment once the prior one has expired, when the priests have shown themselves to be suitable. In any case, the present canon provides that the bishop can, in his prudent opinion, remove the vicar forane from office. Since it is an ecclesiastical office in the strict sense, cc. 145–156, which regulate the essential elements of such offices, apply to removal.

555 **§ 1. Vicario foraneo, praeter facultates iure particulari ei legitime tributas, officium et ius est:**

1° actionem pastoralem in vicariatu communem promovendi et coordinandi;

2° prospiciendi ut clerici sui districtus vitam ducant proprio statui congruam atque officiis suis diligenter satisfaciant;

3° providendi ut religiosae functiones secundum sacrae liturgiae praescripta celebrentur, ut decor et nitor ecclesiarum sacraeque supellectilis, maxime in celebratione eucharistica et custodia sanctissimi Sacramenti, accurate serventur, ut recte conscribantur et debite custodiantur libri paroeciales, ut bona ecclesiastica sedulo administrentur; denique ut domus paroecialis debita diligentia curetur.

§ 2. In vicariatu sibi concredito vicarius foraneus:

1° operam det ut clerici, iuxta iuris particularis praescripta, statutis temporibus intersint praelectionibus, conventibus theologicis aut conferentiis, ad normam can. 279 § 2;

2° curet ut presbyteris sui districtus subsidia spiritualia praesto sint, itemque maxime sollicitus sit de iis, qui in difficilioribus versantur circumstantiis aut problematibus anguntur.

§ 3. Curet vicarius foraneus ut parochi sui districtus, quos graviter aegrotantes noverit, spiritualibus ac materialibus auxiliis necareant, utque eorum qui decesserint, funera digne celebrentur; provideat quoque ne, occasione aegrotationis vel mortis, libri, documenta, sacra supellex aliaque, quae ad Ecclesiam pertine depereant aut asportentur.

§ 4. Vicarius foraneus obligatione tenetur secundum determinationem ab Episcopo dioecesano factam, sui districtus paroecias visitare.

§ 1. Apart from the faculties lawfully given to him by particular Law, the Vicar forane has the duty and the right:

1° to promote and coordinate common pastoral action in the vicariate;

2° to see that the clerics of his district lead a life befitting their state, and discharge their obligations carefully;

3° to ensure that religious functions are celebrated according to the provisions of the sacred liturgy; that the elegance and neatness of

the churches and sacred furnishings are properly maintained, particularly in regard to the celebration of the Eucharist and the custody of the blessed Sacrament; that the parish registers are correctly entered and duly safeguarded; that ecclesiastical goods are carefully administered; finally, that the parochialhouse is looked after with care.

§ 2. In the vicariate entrusted to him, the Vicar forane:

1° is to encourage the clergy, in accordance with the provisions of particular Law, to attend at the prescribed time lectures and theological meetings or conferences, in accordance with can. 279 § 2;

2° is to see to it that spiritual assistance is available to the priests of his district, and he is to show a particular solicitude for those who are in difficult circumstances or are troubled by problems.

§ 3. When he has come to know that parish priests of his district are seriously ill, the Vicar forane is to ensure that they do not lack spiritual and material help. When they die, he is to ensure that their funerals are worthily celebrated. Moreover, should any of them fall ill or die, he is to see to it that books, documents, sacred furnishings and other items belonging to the Church are not lost or removed.

§ 4. The Vicar forane is obliged to visit the parishes of his district in accordance with the arrangement made by the diocesan bishop.

SOURCES: § 1: c. 447 § 1
§ 1,1°: *ES* I, 19 § 1
§ 1,2°: c. 447 § 1,1°; *CD* 30, 1
§ 1,3°: c. 447 § 1,3° et 4°; *DPMB* 187
§ 2,1°: c. 448 § 1
§ 2,2°: *CD* 16
§ 3: c. 447 § 3
§ 4: c. 447 § 2

CROSS REFERENCES: cc. 276–277, 279 § 2, 463 § 1, 7°, 524, 535, 547, 897–994

COMMENTARY

Ernesto Cappellini

By its nature and for the obligations and rights it includes, the office of vicar forane implies a certain ordinary-vicarious participation in the episcopal power of governance, which must be specified, regarding its

scope, in conformance with particular law and in view of the decree of appointment itself.

1. Canon 555 itself delineates the obligations and rights of the vicar forane with a beautiful precision: " ... praeter facultates iure particulari ei legitime tributas, officium et ius est ..." Particular law cannot attribute faculties to it that alter the mission of the vicar forane; and the vicar forane, in turn, cannot give his faculties an interpretation so extensive that his acts become unlawful. He must situate himself within the framework of the law and act in conformance therewith.

The Code puts the pastoral aspect in the first position: "actionem pastoralem in vicariatu communem promovendi et coordinandi" (§ 1, 1°).

Presbyteral communion is part of the apostolic function. The relationships of fraternity and friendship among the priests of the vicariate are a great help to the spiritual life of each one of them, but they must be placed at the service of the Kingdom of God. The task of the vicar forane is the promotion and coordination of common pastoral activity. This makes the isolated action of the parish to be considered as a concept of absurd autonomy, and fosters the study and putting into practice of common programs in which the capacities and competencies of each person are increased in a broader vision.

The initiative for the projects is not exclusive to the vicar forane, but in every case their coordination falls to him: it is his responsibility.

2. The second function is that of *vigilance*: "prospiciendi ut clerici sui districtus vitam ducant proprio statui congruam atque officiis suis diligenter satisfaciant" (§ 1, 2°). It is the paternal presence of the bishop that is brought close through the vicar forane. The priest is not alone; he is not abandoned to himself and neither is his spiritual life nor his ministry.

It is a vigilance that is not primarily for inspection, but for support. It is a fundamental duty of every priest to live according to the *regula clericorum* that the system of law, in its various articulations, proposes. But subjective conditions or objective circumstances can create difficulties that the help of a close brother encourages him to overcome. Pastoral charity must encourage the apostolic action of the priesthood, but discouragements and crises can also compromise their effectiveness in this aspect: no doubt there is room for the help of the vicar forane.

Vigilance must be translated into promotional activity: no. 3 of § 1 of this canon prescribes it.

All the essential aspects of ordinary pastoral activity are entrusted to the supervision of the vicar forane, so that it is implemented in practice: that the liturgical prescriptions are observed in the celebration of sacred functions; that the decorum and cleanliness of the church and the sacred objects and adornments are assured; and that very special care is taken in the celebration of the Holy Eucharist and in the custody of the Most Holy

Sacrament. In this regard it is advisable to recall the statement with which the universal legislator has provided discipline for the celebration and custody of the Holy Eucharist in book IV of the Code (cf. cc. 897–994).

Care must also be taken that the parochial registers are duly entered and diligently safeguarded (cf. c. 535), the ecclesiastical property is diligently administered and the parochial house is maintained in decorous conditions.

The exhortative form that the formulation of the norm adopts must not be slighted. It is a true and proper disciplinary disposition that specifies the duties of vigilance and promotion of the vicar forane.

3. The issue of permanent formation for the clergy has gone on to become a current topic (cf. *PDV* 70–81). Paragraph 2,1° specifies the preoccupation that is incumbent upon the vicar forane in relation to the general knowledge of the priests in his district, at the time and in the manner prescribed by particular law. Canon 279 § 2 mentions lectures, classes and theological meetings, aimed at not leaving the priest lacking in the cultural patrimony that makes him a man of his time, capable of a current dialog with a man of any age.

Pastores dabo vobis 76: "Permanent or ongoing formation, precisely because it is "permanent," should *always* be a part of the priest's life. In every phase and condition of his life, at every level of responsibility he has in the Church, he is undergoing formation. Clearly then, the possibilities for formation and the different kinds of formation are connected with the variety of ages, conditions of life and duties one finds among priests."

The vicarious level is the most suitable to give cultural experiences a correspondence to the exigencies of the local priesthood. It can also be useful to organize a library in the vicarial see, with books and magazines for common use.

4. Beyond culture, there is spiritual life. Paragraph 2,2° possesses a singular profundity of content and perspectives. It is the duty (*curet*) of the vicar forane to ensure that the priests have all the necessary, useful means for their spiritual progress. The canonical discipline (cf. cc. 276 and 277) and the ascetic tradition of the Church have fixed several central points that foster and nourish the most intimate communion with Christ with daily, monthly and annual intervals. The first and most responsible person in this purview continues to be the individual priest. Nevertheless, there are means of help that need a certain organization: for example, spiritual retreats and spiritual exercises, which the individual cannot provide by himself.

No less important is the duty of the vicar forane of solicitously helping priests who find themselves in special difficulties or overwhelmed by problems. We find here a specific dimension of the priestly fraternity. The priest who is going through moments of trial is not left alone. Besides the

warmth of friendship, it is always very comforting in those circumstances the due presence of a brother who draws near to share the trials and tribulations and to find together a way out. It is a mission that enormously ennobles the office of vicar forane.

5. The third paragraph of this canon addresses the case of grave sickness and death of the parish priest of a district. One author[1] rightly notes that other priests in addition to parish priests exist in a vicariate, and the vicar forane ought to take charge of everyone. The *CIC* repeats in this point the norm of c. 477 § 3 of the *CIC*/1917.

During serious illnesses the person must be assured of all the spiritual and material aids necessary in his situation. In cases of death, the vicar forane will see to it that the funeral is worthily celebrated.

The legislator probably fixed his attention only on the parish priests, because he immediately goes on to prescribe that the vicar forane provide that while the parish priest is ill, or when he dies, the parochial books and documents must not be lost or taken from their places, nor the sacred objects and adornments. That is, it aims at the fair concern of protecting the patrimony of the parish against distractions and theft in the period of inactivity of the parish priest.

6. The last prescription established in § 4 refers to the obligation of the vicar forane of visiting the parishes in the vicariate, a visit that makes possible direct contact with the people, environments, structures, and allows him to know how the people behave, the state of preservation of the buildings, and how the institutions are functioning, the liturgy being celebrated, the catechesis being transmitted and the registers being kept.

This visit cannot be done exclusively in terms of friendship or courtesy, because by its own nature it has a character of inspection, and only thus does it respond to its purpose.

7. Canon 449 of the *CIC*/1917 prescribed the annual report of the vicar forane to the bishop to illustrate the positive and negative aspects of his vicariate. Such a norm has not been incorporated into the present *CIC* because it forms a part of the aspects referred to in particular law. It can be considered, on general lines, that between the vicar forane and the bishop there should exist a very close relationship, based on the esteem that the bishop has expressed to him in the act of his appointment.

Therefore, it is necessary that there be meetings between both to carry out assessments and consultations. The bishop must consult the vicar forane in the case of appointment of a parish priest for a parish in his vicariate (c. 524); however, the consultation is facultative for the appointment of the assistant priest (c. 547). Moreover, c. 463 § 1,7° provides for the vicar forane the duty-right of participating in the diocesan synod.

1. F. URSO, "I vicari foranei," in *La parrocchia e le sue strutture* (Bologna 1987), p. 173.

It is very useful to put on the schedule of diocesan projects collegial meetings of the vicars forane and the bishop to examine the situation of the diocese. All this sustains and supports the figure and mission of the vicar forane, and makes possible for the bishop a specific evaluation of the state of the diocese.

8. In cc. 553–555 two characteristic considerations of the *CIC* are confirmed: the primacy of the person and the principle of subsidiarity. In effect, the relationship of the vicar forane with the priests in the vicariate occupy a prominent position. But we cannot overlook a gap that must be filled by particular law: the presence of the permanent deacons is not mentioned and, with marked clericalism, nothing is said of the relationship of the vicar forane with the lay faithful and with the various forms for an apostolate that involve all the members of the Christian community. The same would have to be stated respecting the faithful with a special consecration.

Many purviews are referred to the particular regulations: the relationship of the vicar forane with the diocesan presbyteral council and with the diocesan pastoral council. Nothing has been provided regarding the prominence and importance of the "college" (is it a college?) of vicars forane, though it might be so in a purely consultative function.

My conviction is that the Code of 1983, in these three canons, has not incorporated all the richness of perspectives opened by the pastoral directory for bishops (*DPMB*). Ample room remains for the creativity and initiative of each vicar forane. No doubt, it is an important office within the diocesan structure, on which depends in great measure the communion between the people and the effectiveness of the apostolate.

CAPUT VIII
De ecclesiarum recoribus et de cappellanis

ART. 1
De ecclesiarum recoribus

CHAPTER VIII
Rectors of Churches and Chaplains

ART. 1
Rectors of Churches

556 **Ecclesiarum rectores hic intelleguntur sacerdotes, quibus cura demandatur alicuius ecclesiae, quae nec sit paroecialis nec capitularis, nec adnexa domui communitatis religiosae aut societatis vitae apostolicae, quae in eadem officia celebret.**

Rectors of churches are here understood to be priests to whom is entrusted the care of some church which is neither a parochial nor a capitular church, nor a church attached to the house of a religious community or a society of apostolic life which holds services in it.

SOURCES: c. 479

CROSS REFERENCES: cc. 1214, 1215, 1230, 1232 § 2

COMMENTARY

Roch Pagé

1. *Introduction: rectors of churches*

The simple term "rector" makes reference either to a role of the responsible person or to a function of management. The Code also speaks of

a rector of the seminary (cf. e.g., 261 §§ 1–2) and of a rector of the university (c. 833, 7°).

If the expression *rector ecclesiae*, rector of the church, is applied in a specific sense, as it is employed in this part and especially in c. 556, it gives rise to the thought that in other parts of the Code[1] the same expression[2] encompasses the parish priest and the rector of the church. Nevertheless, the term "rector" applied to the parish priest is not found in the part of the Code that is devoted to it, as was the case in the *CIC*/1917.

The history of the texts that refer to the rectors of churches does not reveal facts of special import in the evolution of any of the uses of the term, with respect to the model that for the majority of them was the formulation of the *CIC*/1917. Nevertheless, it is necessary to mention that the decision to resend the statement of the chaplain to the *schema* regarding consecrated life—where the *schema* of 1977 had incorporated it from the *CIC*/1917—finally led to the decision ex officio of the commission for the revision of the Code[3] to add norms regarding chaplains to close the last chapter about the internal organization of the particular churches.

It does not seem that the members of the commission for the revision of the Code had debated the advisability of dealing with chaplains, since chaplains have more in common with parish priests, both of whom have entrusted faithful, inasmuch as a church is first and foremost entrusted to the rectors.

The article regarding the rectors of the churches contains eight canons, which determine their nature, the competent authority to designate them, their functions, obligations, and revocation. Let us look at the first of them.

2. *The nature*

This canon briefly explains what rectors are and what the churches entrusted to them are not. The rectors are priests, and the churches that are entrusted to them are neither parochial, nor capitular; they are not "attached"[4] to the house of a religious community or society of apostolic life where those functions are celebrated.

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1. Dealt with in c. 764: "priests and deacons, with the at least presumed consent of the rector of a church, have the faculty to preach everywhere..."; and c. 903: "A priest is to be permitted to celebrate the Eucharist, even if he is not known to the rector of the church...."
2. On the other hand, the French have translated this expression, "rector of the church."
3. *Comm.* 14 (1982), p. 230.
4. The Latin text says, "adnexa," and the French translation in this place uses the expression "attachée" while the same word in c. 570 is translated as "annexée," which is more precise.

Like every priest, the rector of the church participates in the priesthood of Christ, exercising the triple function of teaching, sanctifying and governing. Nevertheless, he does not exercise this triple function with respect to a specific community of faithful, as does the parish priest. What is entrusted to him primarily is not a community, but a church, which c. 1214 describes as "a sacred building intended for divine worship to which the faithful have right of access for the exercise, especially the public exercise, of divine worship."

Though the pastoral service for the faithful who go to church is, evidently, included in the function of the rector of the church, this function continues to be oriented especially to the care of the place of worship, with an administrative nuance. The rector of the church is not a proper pastor, as are the parish priest (cf. c. 515 § 1) and the priest to whom is entrusted a quasi-parish (cf. c. 616 § 1). To continue the comparison, the mission of the parish priest is defined in the Code with reference to a community of faithful, while the mission of the rector is conceived of principally with reference to the sacred building that is entrusted to him, and secondarily with reference to the faithful who frequent it.

The church entrusted to a rector is not a parochial church. A parochial church is the place of worship for a specific community of faithful, with its own baptismal font. It is the place of congregation for the community that celebrates there the great human and Christian occurrences of their existence. The parochial church forms a part of the material patrimony of the parish, a public juridical person.

The rectoral church is rather a place of worship for visitors, with respect to the parochial church. Usually, visiting faithful are offered the liturgical celebrations that are not susceptible to being in conflict with those that every parish offers, like the Holy Eucharist, reconciliation, the Word. In general, the shrines, to which "with the approval of the local Ordinary, is by reason of special devotion frequented by the faithful as pilgrims" (c. 1230), are churches entrusted to a rector,[5] according to the meaning of c. 1232 § 2. "The statutes of a shrine are to determine principally its purpose, the authority of the rector ..." This is so, unless a shrine is at the same time a parochial church or attached to the house of a religious community or of an SAL where all the functions are celebrated.

The capitular church, which is entrusted to a chapter of canons,[6] is under the responsibility of the juridical person that constitutes the chapter, whose statutes must determine how, in practice, chrch services will be handled. If the capitular church is at the same time a parochial church, a

5. Cf. VERMEERSCH-CREUSEN, *Epitome juris canonici*, t. I (Rome 1963), p. 468.
6. Cf. R. PAGÉ, *Les Églises particulières*, t. I: *Leur structures de gouvernement selon le code de droit canonique de 1983* (Montréal 1985), pp. 179–181.

priest should be appointed parish priest "whether chosen from the chapter or not" (c. 510 § 2).

Finally, the church entrusted to a rector is distinguished from a church attached to the house of a religious community or of an SAL where all the functions are celebrated. The churches attached to such houses are, *nevertheless, subject to the diocesan* bishop by virtue of other dispositions.[7] The shrines whose "custody" is entrusted to a religious community may or may not be considered churches attached to the houses of a community, as the case may be. The same must be said with respect to the churches which are not shrines in the sense of c. 1230: they may belong to a religious institute or an SAL, or else they may simply be entrusted to one or the other.

7. Cf. cc. 1215 § 3; 678 § 1; 738 § 2.

557 **§ 1. Ecclesiae rector libere nominatur ab Episcopo dioecesano, salvo iure eligendi aut praesentandi, si cui legitime competat; quo in casu Episcopi dioecesani est rectorem confirmare vel instituere.**

§ 2. Etiam si ecclesia pertineat ad aliquod clericale institutum religiosum iuris pontificii, Episcopo dioecesano competit rectorem a Superiore praesentatum instituere.

§ 3. Rector ecclesiae, quae coniuncta sit cum seminario aliove collegio quod a clericis regitur, est rector seminarii vel collegii, nisi aliter Episcopus dioecesanus constituerit.

§ 1. The rector of a church is freely appointed by the diocesan bishop, without prejudice to a right of election or presentation to which someone may lawfully have claim: in which case the diocesan bishop has the right to confirm or to appoint the rector.

§ 2. Even if the church belongs to some clerical religious institute of pontifical right, it is for the diocesan bishop to appoint the rector presented by the Superior.

§ 3. The rector of a church which is attached to a seminary or to a college governed by clerics, is the rector of the seminary or college, unless the diocesan bishop has determined otherwise.

SOURCES: § 1: c. 480 § 1
§ 2: c. 480 § 2
§ 3: c. 480 § 3

CROSS REFERENCES: cc. 157, 158–183, 260–262, 683 § 1

COMMENTARY

Roch Pagé

Free conferral of office by the diocesan bishop constitutes the ordinary manner of designating the rector of the church, who does not have the stability in his office that the parish priest has, since he does not have people entrusted to him. To free appointment by the diocesan bishop corresponds free revocation of which c. 563 speaks: they are two typical acts of the decision *ad nutum*.

The text does not specify any procedure prior to the appointment of the rector, and it does not speak of any of the qualities that the designate must possess. Regarding the procedure, it will be a wise measure for the bishop to consult at least the parish priest of the parish in which the church that has to be provided a rector is located, or else also follow the provisions of c. 524, which at the same time deals with the qualities required of a pastor. Although those qualities can be appreciably different from those that are required of future parish priests, the criteria that serve the bishop for the designation of parish priests can guide him in the designation of rectors of the churches. In any case, and given the primary function of a rector of the church, the candidate should have a certain understanding of administration.

As in the appointment of parish priests, the bishop must respect "the right of election or presentation that someone might have." The right of election can correspond to a brotherhood, a third order or a pious association. The right of presentation can likewise correspond to those groups of faithful, or also to a religious institute or an individual. In each case, it is for the diocesan bishop to confirm the chosen rector or to appoint who was presented to him. The statutes of the church, which generally will be erected as a juridical person since its founding,[1] will determine that right.

The religious institutes have the right to constitute and possess a church (cf. c. 1215 § 3) and to elect or present the rector pursuant to the statutes. Though it deals with a clerical religious institute of pontifical right (cf. c. 589), whose church must have a rector, the rector must be presented to the diocesan bishop for his appointment. Though c. 682 § 1 already establishes that it is the diocesan bishop who appoints the religious "on presentation by, or at least with the consent of, the competent Superior," it is a matter in this case of conferring an ecclesiastical office in the diocese on a religious. Canon 557 § 2 confirms that this disposition is applied even when the clerical religious institute that possesses the church is of pontifical right.[2]

The third paragraph of this canon provides that if the church is attached to a seminary or to another "college directed by clerics," the rector of the seminary or college is by law also rector of the church, "unless the diocesan Bishop has provided otherwise." This is easily understood, given the place and importance of the spiritual and liturgical dimensions in the formation of future priests,[3] on one hand, and the necessary coordination of the spiritual and doctrinal dimensions, on the other (cf. c. 224). And

1. The church itself or the foundation would, insofar as it is a juridical person, be established under a set of conditions, according the terms of c. 115 § 3.

2. Canon 678 acts as the foundation of the ordering which regulates the relationship between bishops and the religious when dealing with the apostolate in the dioceses. For example: "In directing the apostolic works of religious, diocesan bishops and religious Superiors must proceed by way of mutual consultation" (§ 3).

3. Cf. c. 246 § 1.

keeping the function of the rector in mind, it would not be normal that someone different be the rector of the church attached to the seminary.[4] Moreover, whether the seminary has a church or not, it is provided in c. 262 that it is exempt from parochial governance; and it is the rector or his delegate who "performs the function of parish priest for everyone in the seminary." Excepted is the provision of c. 985, which refers to the sacramental confession of the students, which he will not customarily hear.

It should be noted that, since the task of the rector of the church does not primarily refer to a specific community of faithful or imply in principle jurisdictional acts, the law does not provide for a public taking of possession. Likewise, it does not provide for the rector making the profession of faith before beginning his work. However, c. 833, 6° states that "parish priests; the rector, professors of theology and philosophy in seminaries ..." have the obligation to personally make the profession of faith "in the presence of the local Ordinary or his delegate."

4. Cf., for example, cc. 238 § 2 and 260–262.

558 **Salvo praescripto can. 262, rectori non licet functiones paroeciales de quibus in can. 530, nn. 1-6, in ecclesia sibi commissa peragere, nisi consentiente aut, si res ferat, delegante parocho.**

Without prejudice to can. 262, the rector of a church may not perform in his church the parochial functions mentioned in can. 530 nn.1-6, without the consent or, where the matter requires it, the delegation of the parish priest.

SOURCES: cc. 462, 466 § 1, 481, 938 § 2, 1368; SCDS Decr. *Spiritus Sancti Munera,* 14 sep. 1946, I (*AAS* 38 [1946] 352); SCPF Resp., 4 apr. 1952

CROSS REFERENCES: cc. 107 § 1, 1109, 1111, 1118 § 1, 1177 § 2, 1219

COMMENTARY

Roch Pagé

1. *The functions of the rector of a church*

The regulation of the functions of the rector of a church begin with this canon. If the rector is distinguished from the parish priest in that to the latter is entrusted a community of faithful and to the former is entrusted a church, it can be said without a doubt that on the subject of acts of worship the differences between the two are most clearly apparent. Canons 558 and 561, in sum, call attention to two things: the church entrusted to a rector is situated in the territory of a parish (cf. c. 374 § 1) and the faithful that frequent it always have a proper pastor, who is its parish priest (cf. c. 107 § 1).

The rector of a church is not the parish priest, and therefore cannot exercise all the acts of worship in the church that is entrusted to him. He can, nevertheless, perform the non-parochial ministerial functions accessible to every priest pursuant to the law. But it is not allowed to just any priest to perform in the rectoral church the functions that are accessible to him without authorization of the rector.

2. *Functions which are not permitted for the rector of a church*

The provisions of this canon specify those of c. 1219, according to which "in the church lawfully dedicated or blessed all the acts of worship can be performed, without prejudice to parochial rights." Therefore, the rector cannot perform in the church entrusted to him the functions specially entrusted to the parish priest, such as those enumerated in c. 530, 1°–6°. Since that list is exhaustive, it is not left to the rector, from among the functions entrusted to the parish priest, more than "the more solemn celebration of the Eucharist on Sundays and holydays of obligation" (c. 530, 7°). The remaining acts of worship— preaching, the sacrament of penance, blessings, etc.—can be celebrated by the rector of the church, unless they are specifically reserved to the bishop.

Nevertheless, the parish priest can allow the rector to do some of the acts enumerated in c. 530, 1°–6° in his church. For example, he could allow the rector to celebrate the sacrament of the anointing of the sick. Funerals, whose celebration is especially reserved to the parish priest, can be celebrated, nonetheless, in another church without the consent of the parish priest. In effect, c. 1177 § 2 provides that "any member of the faithful, or those in charge of the deceased person's funeral, may choose another church; this requires the consent of whoever is in charge of that church and a notification to the proper parish priest of the deceased."

Assistance at weddings represents a special case. If a baptism can always be celebrated validly by the rector without the authorization of the parish priest—although it would be illicit—the same does not occur with a marriage. Pursuant to c. 1118 § 1, the parish priest can certainly authorize the celebration of a wedding in a non-parochial church, but for the rector to ask for and receive the consent of the parties in the name of the Church, he needs the delegation of that faculty on the part of the parish priest or the local ordinary, without which the marriage would be invalid (cf. c. 1108 § 1).

It is necessary to make note here that in an urgent case or danger of death, the rector of a church can exercise various functions normally reserved to the parish priest. The law foresees several cases. For example, if the parochial church is situated far away, a baptism can be celebrated in another church (cf. c. 859 § 2); confirmation in a case of imminent death (cf. c. 883, 3°); and viaticum in case of necessity (cf. c. 911 § 2). The local ordinary, in certain conditions, "may for the convenience of the faithful permit or order that a baptismal font be placed also in another church or oratory within the parish" (c. 858 § 2).

In principle, then, the rector will not perform parochial acts in his church. To the specific exceptions contained in the Code is added a more general exception, contained in c. 558. "Without prejudice to can. 262," the rector of a seminary is at the same time the rector of the church that could

be united to the latter, but as for the seminary's being exempt from parochial governance, it is the rector who performs the functions of parish priest for everyone in the seminary. He is not, strictly speaking, its parish priest, proper pastor, with all the obligations enumerated for a parish priest. He exercises his office as c. 262 states. On the other hand, that same canon exempts from this office that which concerns marriages and the sacramental confessions of the students, pursuant to c. 985.

559 Potest rector in ecclesia sibi commissa liturgicas celebrationes etiam sollemnes peragere, salvis legitimis fundationis legibus, atque dummodo de iudicio loci Ordinarii nullo modo ministerio paroeciali noceant.

The rector can conduct liturgical celebrations, even solemn ones, in the church entrusted to him, without prejudice to the legitimate laws of a foundation, and on condition that in the judgement of the local Ordinary these celebrations do not in any way harm the parochial ministry.

SOURCES: c. 482

CROSS REFERENCES: cc. 1221, 1222, 1303 § 1, 2°, 1304 § 1, 1306, 1307

COMMENTARY

Roch Pagé

The preceding canon clearly makes known that "liturgical celebrations, even solemn ones" encompass especially the celebration of the Holy Eucharist. Pursuant to c. 559, nevertheless, it is possible that the rector can more or less conduct liturgical celebrations in his church. In effect, "the legitimate laws of a foundation" must be observed and, on the other hand, it is necessary that the celebrations "in no way prejudice the parochial ministry."

The mention of the "legitimate laws of a foundation" alludes to the possibility that the rectoral church has been constructed at the expense of a benefactor, or temporal goods have been accepted "to celebrate Masses, or to perform other determined ecclesiastical functions" (c. 1303 § 1, 2°). None of the two cases can be done without the written permission of the ordinary (cf. c. 1304 § 1), and those foundations must be recorded in writing (cf. c. 1306). Those are the laws of the foundation, which must respect the provisions of the law to be legitimate. They have as a purpose obligations whose report or list is to be displayed "in a conspicuous place, so that the obligations to be fulfilled are not forgotten" (cf. c. 1307 § 1).

Among the "liturgical celebrations, even solemn ones" that the rector can conduct in his church, there can be mentioned the ceremonies of Holy Week, triduum or novenas on the occasion of certain feast days, penitential celebrations, adoration of the Most Holy Sacrament, special preaching during Lent or Advent, etc. In those cases, it is necessary that the parochial ministry suffer no prejudice, and that will depend on the circumstances of locality and, sometimes, of the people. It should be noted that a judgment regarding the existence of a prejudice falls to the local ordinary, and not exclusively to the diocesan bishop.

560 **Loci Ordinarius, ubi id opportunum censeat, potest rectori praecipere ut determinatas in ecclesia sua pro populo celebret functiones etiam paroeciales, necnon ut ecclesia pateat certis christifidelium coetibus ibidem liturgicas celebrationes peracturis.**

Where he considers it opportune, the local Ordinary may direct the rector to celebrate in his church certain functions for the people, even parochial functions, and also to open the church to certain groups of the faithful so that they may hold liturgical celebrations there.

SOURCES: c. 483, 1

CROSS REFERENCES: cc. 858 § 2, 859, 911 § 2

COMMENTARY

Roch Pagé

Although, like the parish priest, he is appointed by the diocesan bishop, the rector of a church exercises his office under the authority of the local ordinary, in contrast to what occurs in the case of the parish priest (cf. c. 519). Thus, at least in principle, the rector of a church can have a certain dependent relationship with the vicar general or with the episcopal vicars, besides the one with the diocesan bishop (cf. c. 134 § 2). Although several episcopal vicars cannot have rectors of a church under their jurisdiction, it continues being true that in certain dioceses, in which the vicars general are numerous and in which the episcopal vicars are designated for a territory, sometimes it will be necessary for the bishop to determine which of them is competent for the rectoral churches, especially to ensure a certain coordination of the exercise of pastoral solicitude of the rector of a church with the parish priest.

It can be true that the rector of a church is entrusted especially with the management of a building, rather than the care of people, but do not forget that that building is first and foremost a place "to which the faithful have a right to enter for divine worship" (cf. c. 1214). Although parochial jurisdiction seems to be always privileged, there are circumstances in which the rector of a church can receive from the ordinary a mandate to celebrate for the people "specific functions, even parochial functions." The prior Code gave as a reason (cf. c. 483) the remoteness of a parochial church, such that the faithful could not go there without serious inconvenience.

Always subject to the judgment of the local ordinary, the rector can be obliged to open the church "to specific groups of faithful so that they celebrate liturgical functions there." This can imply that the rector can, without being obligated to do so, open the church that has been entrusted to him to those groups of faithful, in the same way that he can reject a petition on their part in that sense. If this were to occur, he could be obliged by the local ordinary to accede to the petition of one group of faithful as he might very well be obliged not to open the church to another group of faithful.

561 **Sine rectoris aliusve legitimi superioris licentia, nemini licet in ecclesia Eucharistiam celebrare, sacramenta administrare aliasve sacras functiones peragere; quae licentia danda aut deneganda est ad normam iuris.**

Without the permission of the rector or some other lawful Superior, no one may celebrate the Eucharist, administer the sacraments, or perform other sacred functions in the church. This permission is to be given or refused in accordance with the law.

SOURCES: c. 484 § 1

CROSS REFERENCES: cc. 764, 903

COMMENTARY

Roch Pagé

In his church the rector is like the parish priest in his church: there he is responsible for the celebration of religious services. Thus, it falls to him to give authorization "to celebrate the Eucharist, administer sacraments, or perform other sacred functions" in the church. This authorization can also be granted by "another lawful superior." He can be, evidently, the local ordinary. But he could also be the delegate of the rector or even, in certain cases, the parish priest of the place where the rectoral church is located. For example, if several faithful want to be married in the rectoral church, it will be necessary not only that the assisting minister get the necessary faculty from the local parish priest, but also that the parish priest authorize a marriage outside the parochial church (cf. c. 1118 § 1).

The prior Code said: "sine rectoris ... licentia saltem praesumpta" (c. 484 § 1 *CIC*/1917). Does this mean that pursuant to the new Code authorization can no longer be presumed? This does not seem to be so, if we follow the meaning of the last words of c. 561: "This permission is to be given or refused in accordance with the law." It is very clear that the rector can always require that no one celebrate a sacred function in the church without his authorization. Just as with the parish priest, this is also understood in the two following examples.

The rector can always make use of tolerance and prudent judgment "by right." Thus, according to c. 903, "A priest is to be permitted to celebrate the Eucharist, even if he is not known to the rector of the church, provided either that he presents commendatory letters, ... from his own

Ordinary or Superior, or that it can be prudently judged that he is not debarred from celebrating." Regarding the preaching of the Word, c. 764 is clear: "priests and deacons, with the at least presumed consent of the rector of a church, have the faculty to preach everywhere ... ." Finally, the rector cannot refuse the celebration in his church of "certain functions for the people, even parochial functions," if the local ordinary has ordered it, pursuant to c. 560.

562 **Ecclesiae rector, sub auctoritate loci Ordinarii servatisque legitimis statutis et iuribus quaesitis, obligatione tenetur prospiciendi ut sacrae unctiones secundum normas liturgicas et canonum praescripta digne in ecclesia celebrentur, onera fideliter adimpleantur, bona diligenter administrentur, sacrae supellectilis atque aedium sacrarum conservationi et decori provideatur, neve quidpiam fiat quod sanctitati loci ac reverentiae domui Dei debitae quoquo modo non congruat.**

Under the authority of the local Ordinary, having observed the lawful statutes and respected acquired rights, the rector of a church is obliged to see that sacred functions are worthily celebrated in the church, in accordance with liturgical and canon law, that obligations are faithfully fulfilled, that the property is carefully administered, and that the maintenance and adornment of the furnishings and buildings are assured. He must also ensure that nothing is done which is in any way unbecoming to the holiness of the place and to the reverence due to the house of God.

SOURCES: c. 485

CROSS REFERENCES: cc. 838 § 4, 846 § 1, 958, 1210, 1220, 1279 § 1, 1299–1310

COMMENTARY

Roch Pagé

The rector of a church is subject to certain obligations, for which he is responsible to the local ordinary. The performance of those obligations is situated between two poles: on one hand the observance of the lawful statutes—what c. 559 calls "legitimate laws of a foundation"—and of acquired rights, and on the other hand, the provisions of universal and particular law.

Given the nature of his office, it is not surprising to find that the role of rector of a church is reduced to vigilance, and that this vigilance has the administrative order for its special purpose. Nevertheless, his first duty of vigilance refers to the worthiness that has to accompany the celebration of the sacred functions that he himself has authorized in his church.

The worthy celebration of sacred functions accompanies the observance of "liturgical norms" and "canonical dispositions." Liturgical norms are found in the rituals proper to each sacramental celebration and in

other documents for the universal Church. "The liturgical books, approved by the competent authority, are to be faithfully followed in the celebration of the sacraments. Accordingly, no one may on a personal initiative add to or omit or alter anything in those books" (c. 846 § 1). Moreover, "within the limits of his competence, it belongs to the diocesan bishop to lay down in the Church entrusted to his care, liturgical regulations which are binding on all" (c. 838 § 4).

The other four obligations of the rector enumerated in the text of this canon especially concern the administrative and material aspect of his office:

1. *That obligations are faithfully fulfilled*

No doubt this text refers to the pious foundations whose administration is regulated in detail by cc. 1299–1310. There must be added to these foundations the remaining customarily accepted obligations, like offerings for the celebration of Mass. Among the principles and norms that govern offerings for Mass (cf. cc. 945–958), a disposition exists that directly concerns the rector of a church, in the same way it does the parish priest: "The parish priest, as well as the rector of a church or other pious place in which Mass offerings are usually received, is to have a special book in which he is accurately to record the number, the intention and the offering of the Masses to be celebrated, and the fact of their celebration" (c. 958 § 1). It falls to the ordinary "to inspect these books each year, either personally or through others" (c. 958 § 2).

2. *That the property is carefully administered*

It will have to be seen in the statutes of each church what the position of the rector is regarding the administration of property. If the church is a juridical person, it is probably that the rector will be its administrator, for pursuant to c. 1279 § 1, "the administration of ecclesiastical goods pertains to the one with direct power of governance over the person to whom the goods belong," if there is not contrary provision. In such case, the rector shall keep in mind cc. 1280–1288. If he is not the administrator, he has the obligation of seeing to it that this function is diligently performed.

3. *That the maintenance and decorum of the furnishings and buildings are assured*

This prescription applies the provisions of c. 1220 § 1 to the rector: "those responsible are to ensure that there is in churches such cleanliness

and ornamentation as befits the house of God, and that anything which is discordant with the holiness of the place is excluded." It is even suggested in the following paragraph that "ordinary concern for the preservation and appropriate means of security are to be employed to safeguard sacred and precious goods."

4. *That nothing is done which is in any way unbecoming to the holiness of the place and to the reverence due to the house of God*

Since the church is first and foremost a sacred place, in it "only those things are to be permitted which serve to exercise or promote worship, piety and religion. Anything which is discordant with the holiness of the place is forbidden (c. 1210). The faculty of occasionally permitting the church to be used otherwise than for worship—on the condition that it is not contrary to the sanctity of the place—falls to the ordinary. The expression "ordinary" is wider than the expression, "local ordinary," and includes the major superiors of the clerical religious institutes of pontifical right and of clerical societies of pontifical right (cf. c. 134 § 1). Certainly, concerts of sacred music can be one of those other uses.

563 **Rectorem ecclesiae, etsi ab aliis electum aut praesentatum, loci Ordinarius ex iusta causa, pro suo prudenti arbitrio ab officio amovere potest, firmo praescripto can. 682 § 2.**

For a just reason, the local Ordinary may in accordance with his prudent judgement remove the rector of a church from office, even if he had been elected or presented by others, but without prejudice to can. 682 § 2.

SOURCES: c. 486; *ES* I, 32

CROSS REFERENCES: cc. 129–195, 1732–1739

COMMENTARY

Roch Pagé

The most surprising element of this text is no doubt the fact that the rector of a church can be removed by the local ordinary, even though the rector is appointed by the diocesan bishop. Given that the rector exercises his office under the authority of the local ordinary, the ordinary is certainly in the best position to ascertain a just reason leading to the rector's removal. Be that as it may, the diocesan bishop can reserve these cases to himself when he appoints vicars general and episcopal vicars (cf. c. 479).

According to the provisions of c. 563, the rector does not have any stability, since he can be removed for any just reason in the judgment of the local ordinary. It is a matter of direct application of c. 193 § 3. On the other hand, in § 4 of this canon it is stated that "in order to be effective the decree of removal must be communicated in writing."

The fact that he has been confirmed or appointed to the office by virtue of a right of election or presentation does not give the rector of a church greater stability. The local ordinary is not obliged to follow a specific procedure to remove an elected or presented rector.

Finally, when a rectoral church has been entrusted to a religious, if the local ordinary wants to remove him, c. 682 § 2 applies just as in the case of a parish priest who is a member of a religious institute or is incardinated in an SAL. This means that removal from office can be done "at the discretion of the authority that made the appointment, with prior notice given to the religious Superior; or by the religious Superior, with prior notice being given to the appointing authority. Neither requires the other's consent."

ART. 2
De cappellanis

ART. 2
Chaplains

564 **Cappellanus est sacerdos, cui stabili modo committitur cura pastoralis, saltem ex parte, alicuius communitatis aut peculiaris coetus christifidelium, ad normam iuris universalis et particularis exercenda.**

A chaplain is a priest to whom is entrusted in a stable manner the pastoral care, at least in part, of some community or special group of Christ's faithful, to be exercised in accordance with universal and particular Law.

SOURCES: c. 698; *SCCong* Instr. *Sollemne semper*, 23 apr. 1951 (*AAS* 43 [1951] 564); SCB Instr. *Nemo est*, 22 aug. 1969, 35–36 (*AAS* 61 [1969] 632–633); *DPMB* 180, 183; SCB Decr. *Apostolatus maris*, 24 sep. 1977 (*AAS* 69 [1977] 737–746)

CROSS REFERENCES: cc. 145 § 1, 150

COMMENTARY

Eloy Tejero

1. *The change in how the activities of the chaplain are viewed*

By always making very brief and dispersed references to chaplains, the *CIC*/1917 took into consideration their activities, preferably oriented around divine worship, by examining them in their service to religious houses (c. 479), in the performance of pious obligations connected to lay chaplaincies (c. 1412, 2°), and in their attention to different oratories (cc. 1191–1193), or by comparing their functions to those of the rectors of a church (479–486).

Without forgetting those liturgical functions connected to a church, chapel or oratory, the *CIC* emphasizes the pastoral scope of the chaplains as adaptable living parts which operate in bringing the solicitude of the Church to the most diverse *coetus fidelium*, whose specific confirmation demands a certain pastoral service. Thus, we have passed from a Code that saw the reason for being of the chaplains related to the *cura alicuius ecclesiae* (*CIC*/1917, c. 556), to another, which entrusts to them, in a stable manner, the *cura pastoralis* (*CIC*, c. 564).

Because of the great population movements caused by the Second World War and by the new drawing of the political map of Europe, Pope Pius XII unveiled an extensive normative program of specific pastoral action to serve soldiers, prisoners, emigrants, sailors, the ill, and students, which, by placing them under chaplains, traced the norms where they should conduct their activity and stated the importance of furnishing them a specific pastoral formation.[1]

The first showing in favor of the inclusion in the *CIC* of a nucleus of canons relative to chaplains was done ex officio, October 20, 1981: "Hoc in capite (cc. 495–502 del schema novísimo) quaedam addendae videntur normae de cappellanis."[2] As a consequence of this mandate, we now have available to us this group of canons (564–572), inserted in title *The Internal Ordering of* Particular churches, in which chapter VIII deals with both *Rectors of Churches and Chaplains.* These canons imply a novelty of notable importance: it is the first time that the universal law of the Church regulates, as common law, the activities of the chaplain. And it does so by establishing a minimum nucleus of faculties common to all chaplains, which decidedly contributes to the unitary treatment of this canonical figure in the universal law of the Church. At the same time, it does so by making broad referral to the particular law, which allows the possibility of maintaining that operative agility of the chaplain, whose pastoral service to very diverse *coetus fidelium* must not be suffocated by some rigid formulations of the universal law.

2. *The influence of Vatican Council II and later legislation*

In line with that same pastoral dynamic, Vatican Council II insisted that "the forms of the apostolate should be duly adapted to the needs of

1. Cf. *SCCong*, Decr., April 13, 1940, in *AAS* 32 (1940), pp. 280–281; *Convenio entre la Santa Sede y el Gobierno Español sobre jurisdicción castrense*, August 5, 1950, in *AAS* 43 (1951), pp. 80–86; *SCCong*, Instr. *Sollemne semper*, April 23, 1951, in *AAS* 43 (1951), pp. 562–565; PIUS XII, Ap. Const. *Exsul Familia*, August 1, 1952, in *AAS* 44 (1952), pp. 649–704; *SCCong*, *Normae et facultates*, April 2, 1954, in *AAS* 46 (1954), pp. 248–252; *SAP*, Decr., February 22, 1941, in *AAS* 33 (1941), p. 73; A. CRESPILLO ENGUIX, "Los capellanes," in *Excerpta e dissertationibus in Iure Canonico* 5 (1987), pp. 425–434.
2. *Comm.* 14 (1982), p. 230.

the times, taking into account the human conditions, not merely spiritual and moral but also social, demographic and economic" (*CD* 17). Springing therefrom was that "special concern should be shown for those members of the faithful who, on account of their way of life are not adequately cared for by the ordinary pastoral ministry of the parochial clergy or are entirely deprived of it" (*CD* 18). And from there likewise came the need to promote pastoral methods appropriate to foster the spiritual life among the many mobile groups of people or those who are separated from the ordinary pastoral dynamic.

Before Vatican II it was the SCCong that, by seconding various private initiatives, channeled the activity of those pastoral structures by applying the technique of vicariousness—military vicariates—or by encouraging, through nuncios, internuncios or special legates, the action of the Catholic committees of emigrants.[3] In application of the principle of joint responsibility of the bishops in these purviews of specialized pastoral activity, Vatican II observed that the need for the "Conferences of Bishops, and especially national conferences, should give careful consideration to the more important issues related to these categories. They should determine and provide by common agreement and united effort suitable means and directives to care for their spiritual needs. In doing this they should give due consideration especially to the norms determined, or to be determined, by the Holy See, adapting them to their own times, places and people" (*CD* 18).

The Council having been concluded, the *Motu proprio Ecclesiae sanctae,* "in order to accomplish special pastoral or missionary tasks for various regions or social groups requiring special assistance," specified that these jobs require priests "endowed of a special formation" and that they must "be priests of secular clergy" (*ES* I, 4). In *Regimini ecclesiae universae* 52 the competence to regulate the pastoral action of the chaplains in the above-mentioned areas was attributed to the SCB, which competence continued to impel also the work of the Bishops' Conferences "directly, or through the national director or through another institution, taking care to choose priests prepared for this particular kind of ministry and to present them to the Conference of Bishops of other interested countries or to their institutions, so that ... they be taken in as chaplains or missionaries."[4]

In direct reference to the various canonical forms in which the pastoral services performed by chaplains for certain social groups can be formed, the pastoral Instruction *Pastoralis migratorum cura* mentions

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3. Cf. *SCCong*, Instr. *De Vicariis Castrensibus*, April 23, 1951, in *AAS* 43 (1951), pp. 562–565; A. VIANA, *Territorialidad y personalidad en la organización eclesiástica. El caso de los ordinariatos militares* (Pamplona 1992), pp. 65–74;

4. SCB, Instr. *De pastorali migratorum cura*, no. 23 § 2, in *AAS* 61 (1969), p. 625.

the personal prelatures and parishes, the mission with care of souls, the simple mission, and the cooperating vicar chaplain.[5]

In the years immediately prior to the promulgation of the *CIC*, the pontifical legislation regarding chaplains referred directly to chaplains for soldiers,[6] emigrants, sailors, airports, transients, tourists, highways,[7] hospitals,[8] jails[9] and students.[10]

3. *The definition of chaplain in the current* CIC

The intensity with which pontifical legislation was promoting the pastoral service of the chaplains explains the initial attitude of the preparatory Commission of the *CIC*: "the special norms of the Holy See must be obeyed concerning military chaplains and chaplains of other specific groups of people."[11] The only suggestion made in relation to that text alluded to the advisability that such normative disposition be included in the part of the *schema canonum* that dealt with personal parishes.[12] This was maintained within the logic of the *CIC*/1917 that, in c. 451 § 3—the initial canon of chapter *De parochis*—said: "concerning military chaplains, whether they are major or minor, they must abide by the peculiar prescriptions of the Holy See."

The basic concept in the canonical treatment of the chaplain is the *cura pastoralis*, which c. 564 considers to be oriented to the service "of some community or special group of Christ's faithful," with the evident intentions of accommodating, in the basic reason of the office of chaplain, a limited opening for all kinds of groups, endowed with a certain stability, which can be receiving subjects of that *cura pastoralis*. On the other hand, since not all chaplains considered in the canons that follow have pastoral care entrusted in the same degree, the lesser degree of their participation is alluded to, "at least in part," to encompass broadly the purview of the office of chaplain.

5. Ibid., no. 16 § 3, p. 621; no. 33, pp. 630–631.
6. Cf. A. VIANA, *Territorialidad*..., cit., pp. 92–97.
7. Cf. PONTIFICAL COUNCIL FOR PASTORAL CARE OF MIGRANTS AND ITINERANT PEOPLES, circular letter "Nella sua sollecitudine," no. 1, in *Enchiridion Vaticanum*, VI (Bologna 1980), pp. 583–84.
8. Cf. Z. COMBALÍA SOLÍS, "La vinculación jurídica del capellán en los centros hospitalarios públicos," in *Excerpta e dissertationibus in iure canonico* 6 (1988), pp. 451–517.
9. Cf. PAUL VI, Address to the International Commission of Chaplains on European Prisons, October 11, 1972, in "Insegnamenti di Paolo VI" 10 (1973), pp. 1047ff.
10. Cf. SCCE, Letter *A deux reprises déjà*, July 15, 1976, in *Enchiridion Vaticanum*, V, pp. 1336–1339.
11. *Comm.* 13 (1981), p. 150.
12. Cf. ibid.

The stability with which the canon entrusts the care of souls to the chaplain leaves no room for doubt regarding their consideration as an ecclesiastical office, in the sense that c. 145 § 1 defines it. Therefore, c. 564 requires that it be a priest who receives the office of chaplain, consistent with the provisions of c. 150.

The final reference of c. 564 to the provisions of the universal and particular law regarding chaplains is loaded with meaning. Because the simplicity required by these canons makes it necessary to take into consideration the normative texts of the Apostolic See—not included in the *CIC*—as well as the subsequent provisions that, on this point, are intended to be done by the particular law, on occasion it will be in agreement with the lawful representatives of the competent civil authority, in view of the agility with which this pastoral figure is conceived.

565 **Nisi iure aliud caveatur aut cuidam specialia iura legitime competant, cappellanus nominatur ab Ordinario loci, cui etiam pertinet praesentatum instituere aut electum confirmare.**

Unless the law provides otherwise or unless special rights lawfully belong to someone, a chaplain is appointed by the local Ordinary, to whom also it belongs to appoint one who has been presented or to confirm one elected.

SOURCES: c. 698 § 1, *SCCong* Instr. *Sollemne semper*, 23 apr. 1951, X (*AAS* 13 [1951] 564); SCB Instr. *Nemo est*, 22 aug. 1969, 36 § 2; 37 § 2 (*AAS* 61 [1969] 632–633); SCB Decr. *Apostolatus maris*, 24 sep. 1977, I, art. 5 (*AAS* 69 [1977] 737–746)

CROSS REFERENCES: cc. 146–183, 296, 312 § 1, 317 § 1, 324 § 2, 567, 569

COMMENTARY

Eloy Tejero

1. *The appointment of the chaplain*

Although this canon presents a structure simple in its appearance, the appointment of a chaplain, for the multiple variations in fact that concur in each case, is an act in which, frequently, various organs must concur, often distant in location, although in profound harmony of ends, which search for a better specific pastoral service.

This diversity of circumstance, concurrent in the appointment to this office, explains the prudence with which the legislator, with respect to the appointment of chaplains, foresaw the puzzle of different parts established with a general character in the canonical order in relation to the method of proceeding in the appointment of offices (cc. 146–183). Besides appointments of chaplains done by free conferral by the local ordinary, the rights of presentation, election or postulation of those organs, communities or committees determined in the law must be respected. These necessarily must precede the appointment, confirmation or admission that the local ordinary must do.

But the extraordinary flexibility of the present canon does not refer only to the variety of forms of participation that can be adopted by the local ordinary in the appointment of chaplains, because the same canonical text that contemplates those varied forms of participation opens another range of possible forms of appointing chaplains without that

participation taking place. The initial words of the canon itself, "unless the law provides otherwise or unless special rights lawfully belong to someone," refer to another manner of making the appointment, different from those contemplated with the participation of the local ordinary.

In effect, the decided intention with which the *CIC* allows for the adaptability of the chaplain, so that he can turn his attention to the most diverse pastoral tasks, is particularly consistent with the specific service that, in ecclesial communion, "the institutions, and communities established by the Apostolic Authority for special pastoral tasks,"[1] must render. Because of the specific pastoral care that the pastoral structures erected by the Holy See must perform, like the military ordinariates and personal prelatures, the priests incardinated in them normally do not receive from the local ordinary the appointment that allows them to perform their specific pastoral service. The military chaplains are appointed by their own ordinary[2] in the same way that the priests incardinated in a personal prelature receive from their prelate the determination of the pastoral task in the service of the apostolic works of that prelature (c. 296).[3]

To suitably perceive the logic with which the above-mentioned personal structures of pastoral care act when they appoint their chaplains in agreement with the autonomy that is proper to them in the law of the Church, it is important to have in mind the broad accommodation particular law made by c. 564. Its definition of chaplain makes applicable, also to the chaplains who are not appointed by the local ordinary, the basic criterion established in c. 566 § 1, which says "a chaplain must be given all the faculties which due pastoral care demands." To which—keeping in mind what that same text establishes—it must be added: "besides those which are given by particular Law or by special delegation."

2. *The specific pastoral formation of the chaplain*

The first thing that those who perform this pastoral service need is a specific personal preparation, which, on occasion, is not possible to acquire through the ordinary channels of priestly formation. To order the appointment of chaplains who have the appropriate preparation, the norms given by the Holy See have experienced notable changes after Vatican Council II. Pius XII entrusted to the SCCong the responsibility that those who aspire to be chaplains of emigrants or sailors have the necessary personal conditions. A delegate for the work of emigration must present to

1. CDF, *Letter* May 28, 1992, no. 16 in *L'Osservatore Romano* 15-16-VI, 1992, pp.7–9.
2. Cf. *SMC*, II–VI, *AAS* 78 (1986), pp. 483–84; Cf. A. VIANA, *Territorialidad y personalidad en la organización eclesiástica. El caso de los ordinariatos militares* (Pamplona 1992), pp. 114–131.
3. Cf. "Codex Iuris particularis Opus Dei," no. 50, in A. DE FUENMAYOR-V. GÓMEZ-IGLESIAS-J.L. ILLANES, *El itinerario jurídico del Opus Dei. Historia y defensa de un carisma* (Pamplona 1989), p. 635.

the SCCong the priest to be approved by it, and through a rescript, receive the designation of the place where he should perform his ministry. Only when endowed by this special mandate can the priest receive from the local ordinary the canonical mission to exercise the care of souls proper to the office entrusted to him.[4]

Paul VI determined that the councils and secretariats of emigrations of the work for the apostolate of the sea, air and transients would remain attached to the SCB.[5] Currently, PCPCMIP "directs the pastoral solicitude of the Church towards the special needs of those who are obliged to abandon their mother countries or completely lack one; likewise, it takes care to closely study the issues related to this subject."[6] This direction of pastoral solicitude, in this purview, is exercised by the Holy See without assuming now the responsibility of the specific preparation that these priests need, which is a task proper to the Conferences of Bishops. They "directly or through a national director, or by another institution, must undertake to choose the priests who are prepared for this particular kind of ministry and to present them to the Conference of Bishops of other interested nations or to their institutions so that ... they are accepted as chaplains or missionaries for emigrants."[7] Therefore, the Bishops' Conferences, and not the Holy See, will now give the rescript of appointment of this chaplain, to be presented to the local ordinary, from whom the chaplain will receive the canonical mission.[8] At the same time, the ordinaries of the countries of immigration can be directed to the Bishops' Conference of the place of emigration by soliciting the sending of priests who are equipped to perform their pastoral ministry in favor of their emigrant compatriots.[9]

It is evident that the oversight of the needs of this special group of faithful requires a determined action that allows the Bishops' Conference to deploy its own responsibilities: the designation of a delegate for this work or the constitution of an episcopal commission specifically dedicated to this purview.[10]

As it can be seen, coordination of this work of the different Conferences of Bishops will not always be easy. Therefore, by echoing the provisions of Vatican II regarding "where the nature of the apostolate demands this, not only the proper distribution of priests should be made easier but also the carrying out of special pastoral projects for the benefit of differ-

4. Cf. PIUS XII, Ap. Const. *Exsul Familia*, August 1, 1952, cc. 12–13, in *AAS* 44 (1952), p. 696.
5. Cf. *REU*, art. 52, in *AAS* 59 (1967), p. 903.
6. Cf. *PB*, art. 150 § 1.
7. SCB, Instr. *De pastorali migratorum cura*, August 22, 1969, art. 23 § 2, in *AAS* 61 (1969), p. 625.
8. Cf. ibid., art. 36 § 2, p. 632.
9. Cf. ibid., art. 31 §§ 1 and 2, p. 630.
10. Cf. ibid., art. 22, p. 625.

ent social groups in any region or among any race in any part of the world" (*PO* 10), the SCB has opened new channels to better the preparation of the priests devoted to this labor of souls. "Having consulted the interested Conferences of Bishops or also the requirement of one of them, to assure spiritual service to certain particularly numerous social groups, the S. Congr. for bishops can erect prelatures that are composed of priests of secular clergy in possession of a special formation, to be subject to the governance of the proper prelate with proper statutes."[11]

3. *Different types of chaplains in the same particular church*

Currently it is PCMIC that "works to see that in the particular churches refugees and exiles, migrants, nomads, and circus workers receive effective and special spiritual care, even, if necessary, by means of suitable pastoral structures" (*PB* art. 150 § 1).

In regard to the specific ways that, in a specific diocese, the pastoral structures in this field can be adopted, *Christus Dominus* 23 states: "where there are believers of different rites, the bishop of that diocese should make provision for their spiritual needs either by providing priests of those rites, or special parishes, or by appointing episcopal Vicars, with the necessary faculties. If necessary, such a vicar may be ordained bishop."

Regarding chaplains for public centers of a civil character—jails, hospitals, colleges, universities, etc.—the universal law does not make determinations regarding the procedure to follow for their appointment. The particular law is intended to specify the norms to follow in each case, in agreement with the civil authorities that must attend to the right of religious attendance that the citizens have.[12]

Finally, regarding the appointment of the chaplain of a public association, cc. 317 § 1 and 312 § 1 specify that the Holy See for the universal and international associations, the Bishops' Conference for the national associations, and the diocesan bishop for the diocesan associations are the competent authorities for the appointment of their chaplains, unless the respective statutes provide otherwise. The manner of procedure is different if a private association of faithful desires a spiritual counselor, for, pursuant to c. 324 § 2 "it can freely choose one for itself from among the priests who lawfully exercise a ministry in the diocese, but the priest requires the confirmation of the local Ordinary."

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11. SCB, Instr. *De pastorali migratorum cura*..., cit., art. 16 §3, p. 621.

12. Cf. Z. COMBALÍA SOLÍS, "La vinculación jurídica del capellán en los centros hospitalarios públicos," in *Excerpta e dissertationibus in iure canonico* 6 (1988), pp. 452–458; E. MOLANO, "La asistencia religiosa en el Derecho eclesiástico español," in *Persona y Derecho* 11 (1984), pp. 211–244; A. VITALE, "Asistenza spirituale e Diritto del lavoro," in *Il Diritto Ecclesiastico* 90 (1979), II, pp. 374–379.

566 **§ 1. Cappellanus omnibus facultatibus instructus sit oportet quas recta cura pastoralis requirit. Praeter eas quae iure particulari aut speciali delegatione conceduntur, cappellanus vi officii facultate gaudet audiendi confessiones fidelium suae curae commissorum, verbi Dei eis praedicandi, Viaticum et unctionem infirmorum administrandi necnon sacramentum confirmationis eis conferendi, qui in periculo mortis versentur.**

§ 2. In valetudinariis, carceribus et itineribus maritimis, cappellanus praeterea facultatem habet, his tantum in locis exercendam, a censuris latae sententiae non reservatis neque declaratis absolvendi, firmo tamen praescripto can. 976.

§ 1. A chaplain must be given all the faculties which due pastoral care demands. Besides those which are given by particular Law or by special delegation, a chaplain has by virtue of his office the faculty to hear the confessions of the faithful entrusted to his care, to preach to them the word of God, to administer Viaticum and the anointing of the sick, and to confer the sacrament of confirmation when they are in danger of death.

§ 2. In hospitals and prisons and on sea voyages, a chaplain has the further faculty to be exercised only in those places, to absolve from *latae sententiae* censures which are neither reserved nor declared, without prejudice to can. 976.

SOURCES: § 1: SCDS Decr. *Spiritus Sancti Munera*, 14 sep. 1946, I (*AAS* 38 [1946] 349); SCDS Resp., 30 dec. 1946; scc Ind., 31 aug. 1953; scc Facul., 19 mar. 1954 (*AAS* 46 [1954] 415–418); scc Resp., 7 iul. 1956; SCB Instr. *Nemo est*, 22 aug. 1969, V (*AAS* 61 [1969] 632–633); SCB Decr. *Apostolatus maris*, 24 sep. 1977, II (*AAS* 69 [1977] 737–746)
§ 2: SCB Decr. *Apostolatus maris*, 24 sep. 1977, II, art. 1, 9 (*AAS* 69 [1977] 737–746)

CROSS REFERENCES: cc. 132, 508, 530, 567–569, 630 § 1, 764, 860 § 2, 882–888, 966–967, 882–888, 911, 921, 922, 967 § 3, 976, 991, 1003 § 2, 1314, 1318, 1354 § 3, 1367, 1370 § 1, 1378 § 1, 1382

COMMENTARY

Eloy Tejero

1. *The faculties of the chaplain*

Paragraph 1 of this canon establishes the minimum level of faculties, common to all chaplains *vi officii*, besides the specific faculties later attributed to a certain kind of chaplain by other canon texts, which are not dealt with here.

This is the first time in history that the universal law classifies these minimum faculties common to all chaplains, not found in the *CIC*/1917 or in the pontifical regulations prior to the *CIC*, which always stated the faculties of the chaplains in specific reference to a certain kind of chaplain, without ever fixing a common minimum level of faculties corresponding to all, as § 1 of this canon does.

This normative option is due to the content of pastoral care that the *CIC* decidedly grants to the office of chaplain, in contrast to the prior one. This option is formed, as a justifying criterion of this classification and an interpreting principle of the *mens legilatoris*, in these terms: "A chaplain must be given all the faculties which due pastoral care demands."

From this principle, the canon provides the faculties that, by reason of his office correspond to every chaplain, besides those faculties that some determined types of chaplains can receive by the Code itself or by particular law or because of special delegation. Every chaplain can hear the confessions of the faithful entrusted to his care, preach the word of God to them, administer viaticum and the anointing of the sick, and also confer the sacrament of confirmation on those in danger of death.

In relation to the faculty of hearing the confession of the faithful entrusted to his care, we are dealing with one of the habitual faculties that c. 132 § 1 talks about, which corresponds to the chaplain *vi officii* and that can be exercised with the breadth provided in c. 967 § 3; but it is specified that it be exercised, in principle, in the purview proper to the faithful in the care of the chaplain.

As a consequence of the attribution of this faculty, with a general character, to all the chaplains, the chaplain of the house of a lay religious institute, mentioned in c. 567 § 2.

With respect to the faculty of preaching the word of God to the *coetus fidelium* entrusted to him, it cannot be more consistent with the pastoral care that is entrusted to the chaplain. Canon 764 attributes to the priests and deacons the faculty of preaching everywhere, as long as an act of the ordinary does not restrict or remove it. The faculty of the chaplain

is more delineated by a specific canonical mission, with the rights and duties that flow therefrom.

A similar thing must be said regarding the faculty of administering the viaticum to the faithful and the anointing of the sick: cc. 911 and 1003 § 2 enable any priest to administer these in cases of need. The chaplain has been sent, by his office, to several specific faithful with the imperative mandate of providing to them these ministries. The same difference is established between the way in which c. 883, 3°, provides that any priest can administer the sacrament of confirmation "on danger of death" and the inclusion of this ministry of the chaplain, when there is a danger of death, in the canonical mission that by his office he has received.

It is sufficient, in comparing the faculties attributed in § 1 for all chaplains with those that c. 530 attributes to the parish priests, to perceive that, finding ourselves before two offices ordained to perform the care of souls, each one has its own and distinct content. But what is said of the chaplain, as a general rule of his office, cannot be said, in the same sense, of all chaplains; for some of them, like those contemplated in cc. 568 and 569, are equivalent to parish priests and can exercise, within their own purview, all the parochial functions contained in c. 530. On the other hand, the chaplains contemplated in c. 566 § 2 have a faculty that has not been granted as such to parish priests.

2. *Faculty of hospital, prison and sea voyage chaplains*

In effect, § 2 of the canon attributes to the hospital, prison and sea voyage chaplains a specific faculty, which they can only exercise in their respective premises: that of absolving censures *latae sententiae* (cf. cc. 1314 and 1318) that are not reserved (cf. cc. 1354 § 3, 1367, 1370 § 1, 1378 § 1, 1382, 1388 § 1) or declared.

The manner of formulating this faculty brings up several questions that we must clarify here. Although it is not expressly said that this absolution operated in the internal sacramental forum, to this purview belongs the faculty of absolving that these chaplains have. It is a faculty very similar to that which c. 508 attributes to the canon penitentiary, which, having the same purpose, is exercised in reference to a broader local purview, like the diocese.

In relation to the same purpose of this faculty granted to the hospital, prison and sea voyage chaplains, § 2 of this canon states that they can "absolve from *latae sententiae* censures which are neither reserved nor declared." If we compare this expression with that of c. 976, which refers to every priest, with respect to a penitent who is in danger of death, we confirm that, in this situation, the canon's text attributes a faculty with a purpose notably broader than the corresponding faculty of chaplains spo-

ken of in c. 566 § 2: every priest, in danger of death, can absolve from any censure or sin, without any material limitation. Can a reason be found to explain that greater breadth of the faculty attributed to "any priest, even though he lacks the faculty to hear confessions" (c. 976), with respect to the faculty attributed in c. 566 § 2 to the hospital, prison and sea voyage chaplains?

Regarding the practical operativity of this faculty, there is no doubt that the chaplains mentioned in c. 566 § 2, if their faithful are in danger of death, can exercise the faculty of absolving with the breadth formulated in c. 976. This fact makes us understand that the legislator conceives of the faculty provided for the chaplains contemplated in c. 566 § 2 with an autonomous and independent operativity of the situation of danger of death contemplated in c. 976. Therefore, the specific faculty of the chaplains contemplated in c. 566 § 2 has a more limited purpose, because it operates over situations in fact less urgent than that of danger of death.

Finally, it is significant that the canon does not mention, among the faculties of hospital chaplains, that of baptizing. Canon 860 § 2 provides that "baptism is not to be conferred in hospital, except in a case of necessity or for some other pressing pastoral reason."

567 **§ 1. Ad nominationem cappellani domus instituti religiosi laicalis, Ordinarius loci ne procedat, nisi consulto Superiore, cui ius est, audita communitate, quemdam sacerdotem proponere.**

§ 2. Cappellani est liturgicas functiones celebrare aut moderari; ipsi tamen non licet in regimine interno instituti sese immiscere.

§ 1. The local Ordinary is not to proceed to the appointment of a chaplain to a house of a lay religious institute without consulting the Superior. The Superior has the right, after consulting the community, to propose a particular priest.

§ 2. It is the responsibility of the chaplain to celebrate or to direct liturgical functions; he may not, however, involve himself in the internal governance of the institute.

SOURCES: § 1: cc. 479 § 2, 529

CROSS REFERENCES: cc. 119, 127, 147, 158, 161–163, 312, 317 §§ 1 et 2, 324 § 2, 556, 559, 560, 561, 562, 566 § 1, 588 § 3

COMMENTARY

Eloy Tejero

This canon specifically refers to the chaplain of a house of a lay religious institute that does not have, by its nature, the exercise of sacred orders (c. 588 § 3) which need the services of a chaplain.

Paragraph 1 provides the procedure for his appointment, which is new in respect to the *CIC*/1917. The *CIC*/1917, in c. 529, established that, when dealing with non-exempt lay religious, the local ordinary would appoint a priest who should render this service. If they were exempt, it was for the regular superior to make that designation, and only if he were negligent in acting, could the ordinary fill such deficiency.

Coincidentally with the criterion manifested by the rough drafts of the canons,[1] the *schema* of 1980, c. 608 § 1, said: "Cappellanus domus Instituti religiosi laicalis ab Ordinario loci nominatur." It was on expounding the observations *ad novissimum schema,* when two Fathers proposed with respect to the designation of this chaplain: "libere a sodalibus eligitur

1. Cf. *Comm.* 13 (1981), p. 312.

dummodo ipse consentiat et Ordinarius approbet." They justified their proposal this way: "quia systema fuit efficax, et non apparet cur mutandum sit."[2]

In spite of the vagueness of this formula, the advisability of the participation of the religious was accepted in the designation of their chaplain without managing to specify the manner of that participation: "Propositio recipitur ad mentem, ita ut in fine § 1 addatur verba 'proponente communitate' (Subintellegitur 'communitas' hierarchice ordinata.)."[3] It was the *schema* of 1982, when the text of the present formulation appeared, which specified well the scope that must be given to the participation of the local ordinary, the religious superior and the community in the appointment of the chaplain.

The religious community has the right to be consulted by its superior, who has no obligation to follow the opinion of his subjects, even if it is unanimous; but his proposal would be invalid if he had not listened to the opinion of the community beforehand (cf. c. 127 § 2, 2°). After weighing the opinion of the religious, the superior has the right to propose to the ordinary the priest he considers most suitable, who should be appointed as chaplain by the local ordinary. The local ordinary cannot proceed on his own initiative in this appointment, unless a period of three months has passed from the time of the vacancy of the office (c. 158 § 1). But he must judge the suitability of the one presented (c. 161) and act in conformance with the provisions of cc. 161–163.

Very similar to this method of procedure is the one established by c. 317 §§ 1 and 2 for the appointment of the chaplain or ecclesiastical assistant of a public association of faithful. Depending on whether it is a public association of universal (or international) purview, national or diocesan (c. 312), the confirmation of the candidate for chaplain, at the suggestion of the person designated by the statutory law, will fall to the Holy See, the Bishops' Conference or the diocesan bishop, respectively. This norm is also applied "for associations which members of religious institutes, by apostolic privilege, establish outside their own churches or houses. In associations which members of religious institutes establish in their own church or house, the appointment or confirmation of the moderator and chaplain belongs to the Superior of the institute, in accordance with the statutes" (c. 317 § 2).

The method of procedure is different in designating a spiritual counselor for a private association of faithful: it can freely choose one for itself from among the priests who lawfully exercise a ministry in the diocese, but the priest "requires the confirmation of the local Ordinary" (c. 324 § 2).

2. Ibid. 15 (1983), p. 76.
3. Ibid.

Paragraph 2 of the present canon limits the content proper of the activity entrusted to this chaplain of a house of a lay religious institute to "celebrating or organizing liturgical functions." This formulation is also employed by cc. 556, 559, 560, 561 and 562 to express the specific activity of the rectors of churches. This is understandable, keeping in mind that the article relative to the chaplains is included in the chapter whose rubric states: *De ecclesiarum rectoribus et de cappellanis*. Nevertheless, this assimilation of the chaplains to the rectors of churches, for the liturgical functions that they perform, is not found in the treatment that the *CIC* gives to other kinds of chaplains, whose reason for being, according to what we have seen, is eminently pastoral. The classification of chaplain of a religious house in parallel to the rector of a church was already in the *CIC*/1917, c. 479.

It must be asked, then, if this limitation of the chaplain of a religious house to liturgical functions is so strict that none of the faculties that c. 566 § 1 attributes, *vi officii*, to every chaplain do not apply because "he must be given all the faculties which due pastoral care demands." In our opinion, though the present canon does not make specific reference to this nucleus of faculties of every chaplain, it cannot be denied that the common faculties, *vi officii*, of every chaplain also apply to a chaplain of a religious house—even though, in their exercise, the criterion stated in § 2 of c. 567 must be kept in mind: "he may not, however, involve himself in the internal governance of the institute."

568 **Pro iis qui ob vitae condicionem ordinaria parochorum cura frui non valent, uti sunt migrantes, exsules, profugi, nomades, navigantes, constituantur, quatenus fieri possit, cappellani.**

As far as possible, chaplains are to be appointed for those who, because of their condition of life, are not able to avail themselves of the ordinary care of parish priests, as for example, migrants, exiles, refugees, nomads and sea-farers.

SOURCES: SCDS Decr. *Spiritus Sancti Munera*, 14 sep. 1946, I (*AAS* 38 [1946] 349); SCDS Resp., 30 dec. 1946; *SCCong* Ind., 31 aug. 1953; *SCCong* Facul., 19 mar. 1954 (*AAS* 46 [1954] 415–418); *SCCong* Resp., 7 iul. 1956; *CD* 18; *ES* I, 9; SCB Instr. *Nemo est*, 22 aug. 1969, V (*AAS* 61 [1969] 632–633); SCB Decr. *Apostolatus maris*, 24 sep. 1977, II (*AAS* 69 [1977] 737–746)

CROSS REFERENCES: cc. 294–297, 369, 370, 403–411, 515, 518

COMMENTARY

Eloy Tejero

1. This canon contemplates the need to provide, through chaplains, pastoral care to "those who, because of their condition of life, are not able to avail themselves of the ordinary care of parish priests, as for example, migrants, exiles, refugees, nomads and sea-farers."

The phenomenon of migration and human mobility, besides being a fact of fundamental incidence in the social and cultural dynamic of our time, also constitutes a prism of vision which embraces the following of the historical development of peoples, their cultural features, their bellicose or commercial itineraries, the laws that incorporate individuals into human groupings, the forms that structure populations, and the participation of people in primary communities or in the ordering of societies. Hence, historians, on stating the explicatory considerations of the progressive expansion of early Christianity, attribute a special importance to the phenomenon of human mobility then carried out by the parish priests, the military, officers of the empire, merchants and slaves, as diffusing elements of the faith among their contemporaries. Later they were joined by populations of barbarians, invaders and protagonists of a new period in the history of human migrations and diffusion of the faith.

To better understand the importance of human mobility and the diffusion of the faith in Christ, it must be kept in mind that migrations prior to the Twentieth century were not as much that of isolated individuals as

of human groups, people, carriers of their own structures, customs and social usages. Those human groups, those people, before the Church had a territorial organization of the Roman Empire, were those who, having substituted the worship of household *lares* for their faith in Christ, opened their houses to the local church, as witnessed in the Acts of the Apostles and the Pauline letters (Act 16:31–32; 18:2–3; 18:8; Rom 16:3–5; 16:10; 16:15; 1 Cor 16:19; Phil 4:22; Col 4:15; 2 Tim 4:19). In Rome and other cities, the people gave the church their basilicas, cemeteries and titles for the ascription of clerics to pastoral services. That is, it was the world itself from the local organization that constituted the social habitat of the first Christian pastoral organization endowed, therefore, with the operative adaptability that maintained the local structures in a world influenced by migrations , in which Roman citizenry itself was a personal condition, maintained in all the regions of the empire.

It is true that canon XIII of Ancira aims to bind episcopal privilege to the *civitas*, limiting the activities of the non-citizen bishop or a prelate substituting for a bishop. But this initial manifestation of territorial criteria, emerging also in canons IV and V of Nicea regarding ecclesiastical provinces and manifesting a participation in the Roman territorial administration in the ecclesiastical organization subsequent to the Christianization of the empire, was truncated a few decades later by the barbarian invasions, whose civilization was not specifically made up of cities or did not maintain Roman provincial administration. The plurality of people, existing in the Germanic kingdoms, also implied a plurality of juridical usage and a personal variety of laws, which followed the individual, like his own juridical patrimony, wherever he went: Romans, Ostrogoths, Lombards, Franks, Byzantines, etc., populated the villages and cities of Italy, maintaining each people, and their own lineage, churches, clergy, liturgy, language and customs. The same occurred in other Germanic kingdoms, which maintained a plurality of cultures, with their own bishops and with churches that bound their faithful together by reason of a plurality of patronages of the feudal lords over their followers. But where the plurality—of personal liturgical customs, personal juridical statutes, churches and personal monasteries—was more patent, was in Rome. Because of the plurality of people that inhabited it and because pilgrims from every part of the world converged in it, uninterruptedly, their spiritual care was taken over by the *scholae peregrinorum* constituted close to the tomb of St. Peter—of whose existence we have an account since the Eighth century—which had Saxon, Lombard, Frank and Frisian priests as well as those from other nationalities for the pastoral service of their fellow countrymen.[1]

As a consequence of the territorialization of the estates that was begun in France and certain parts of Italy in the Ninth century, a text of

1. Cf. J. FERRETTO, "S.S. Pio XII provvido padre degli esuli e sapiente ordinatore dell'assistenza spirituale agli emigranti," in *Appollinaris* 27 (1954), p. 327.

the False Decretals acknowledges this tendency of also territorializing the churches and parishes: "Ecclesias vero singulas singulis presbiteris dedimus, parroechias et cimeteria eis divisimus, et unicuique ius proprium habere statuimus, ita videlicet ut nullus alterius parroechiae terminos aut ius invadat, sed unusquisque suis terminis sit contentus."[2] Moreover, the False Decretals prohibited: "non ad modicam civitatem, ne vilescat nomen episcopi, aut alicubi, sed in honorabilem urbem titulandus et honorandus est. Presbiter vero ad qualemcumque locum vel ecclesiam quae in eo constituta est praeficiendus."[3]

In spite of these texts, falsified by the Pseudo-Isidore and attributed to popes of the first centuries, they exercised a great influence on the subsequent canon law, for the erroneous understanding of the medieval canonists who expressed a criterion deployed by the Church already in the times of the catacombs, the Italian villages and cities continue to maintain their variety of languages, rites and customs, which the system of care of souls ordered by personal and not territorial criteria used to conserve. The testimony of canon 9 of the Fourth Lateran Council is very expressive: "Quoniam in plerisque partibus intra eandem ciuitatem atque dioecesim permixti sunt populi diuersarum linguarum, habentes sub una fide uarios ritus et mores, districte precipimus ut pontifices huiusmodi ciuitatum siue dioecesum prouideant uiros idoneos qui, secundum diuersitates rituum et linguarum, diuina officia illis celebrent et ecclesiastica sacramenta ministrent, instruendo eos uerbo pariter et exemplo."[4]

That same system of plurality of parochial churches, connected to groups of faithful adhering together through personal and not territorial criteria, was followed in many Spanish towns and cities, which, populated after the Reconquest by various peoples—Franks, Gauls, Highlanders, Mozarabes, Portuguese and Castilians—organized their parishes in conformance with groupings of affinity by nature, lineage or family ties. Because of this, they were called personal local parishes. The progressive advance of local historical studies allow the assurance that this system of personal parishes—today known generally regarding the Mozarabes of Toledo—was followed until the confiscations of the Twentieth century to determine the parishioners in San Sebastián, Vitoria, Olite, Logroño, Arnedo, Soria, Burgos, Medina del Campo, Arévalo, Olmedo, Avila, Ayllón, Peñafiel, Sacramenia, Teruel, Daroca, Calatayud, Cáceres and other Spanish cities and towns.

2. While the local personal parishes in Europe disappeared at the end of the Nineteenth century, at the same time pastoral fecundity in the United States was emerging, where Catholic emigrants organized their

2. P. HINSCHIUS, *Decretales pseudo-isidorianae et capitula Angilramni*, (Leipzig 1863), photomechanical ed. 1963, p. 196.

3. Ibid., p. 82.

4. A. GARCÍA Y GARCÍA, *Constitutiones Concilii quarti Cateranensis una cum Commentariis glossatorum* (Vatican City 1981), p. 57.

personal parishes according to their languages or nationalities. From 1789, when the first parish for German emigrants was erected in Philadelphia, they grew very quickly until they had spread into all the states in only a half- century. The best proof of pastoral success of this kind of parish is that, by themselves, without sending missionaries and without other kinds of evangelizations, they began the development of Catholicism in the United States.[5]

Nevertheless, a century later, also in this country, the idea was taking shape that parishes should be territorial. Although the linguistic or national parishes continued, gradually they had to accept the consequences of the reception of the territory as a basic criterion of parochial delimitation. Perhaps the most significant consequence was that its responsibility, in the pastoral service of the faithful, is no longer exclusive, but cumulative with the territorial parish. This criterion would be established by Pius XII and would also apply to other purviews of pastoral care different from that of the emigrants.[6]

3. Moreover, it must be kept in mind that the pastoral structures for emigrants exceed the level of personal parishes, which frequently form a part of other personal structures for emigrants: ordinariates, dioceses, eparchies, prelatures, etc. By way of example, we indicate some of these structures erected in the Twentieth century.[7]

Pius X erected an ordinariate for the Catholic faithful of the Ruthenian rite in the United States and another in Canada. Benedict XV established the ordinariate for fugitives in Italy; Pius XI, the ordinariate for Slavic people in China; Pius XII, the ordinariate for the faithful of the Eastern rite in Brazil, another in France, and another in Germany for the Polish refugees there; and John XXIII, the ordinariate for the faithful of the Eastern rite in Argentina.

Benedict XV erected the personal diocese of Lungro, in Calabria, for the faithful of the Greek rite, coming from Epiro and Albania, fugitives in Italy; Pius XII, the diocese in Cairo for the fugitive Maronites in Egypt; and Pius XI the eparchy of Piana dei Greci in Sicily for the faithful of the Byzantine rite.

5. Cf. J. GARCÍA DE CÁRDENAS, *Las parroquias personales (lingüísticas) en la pastoral de la inmigración en los Estados Unidos durante el siglo XIX* (Rome 1991).

6. Cf. C. SOLER, "Jurisdicción cumulativa," in *Ius Canonicum* 28 (1988), pp. 131–134.

7. Cf. J. FERRETTO, "S.S. Pio XII...," cit., pp. 328–344; M. RIZZI, "Annotationes ad decretum S.C. pro Ecclesia Orientali, July 27, 1954," in *Apollinaris* 28 (1955), pp. 210–216; A. HERMAN, "Adnotationes ad decretum S.C. pro Ecclesia Orientali," in *Monitor Ecclesiasticus* 80 (1956), pp. 27–30; P. TOCANEL, "Annotationes ad decretum S.C. pro Ecclesia Orientali," in *Apollinaris* 34 (1961), pp. 13–16; D. FALTIN, "Annotationes ad Const. Apost. de Exarchatu pro ucranianis in Gallia," in *Apollinaris* 34 (1961), pp. 275–279; C. DE CLERC, "Annotationes ad decretum S.C. pro Ecclesia Orientali, 19.II.1959," in *Apollinaris* 35 (1962), pp. 22–24.

The erection of exarchates has been more common: four for the Ruthenian rite in Canada and another in Germany; ones for the Ukrainians in Canada, the United States, Brazil, Australia and Great Britain; and one in France, for the Armenians. John Paul II has constituted, among others, an exarchate for the Byzantines of Melchite rite in Canada and two for the Armenians in America.

4. In intimate relationship with these personal structures, which have the capacity to send priests on canonical mission for the care of souls of their own faithful, are the seminaries or colleges for the formation of the priests incardinated in these structures. Pius X addressed the Archbishop of New York regarding the foundation of a seminary for the children of Italian emigrants. He founded the college of priests for Italian emigrants, which, in 1920 began its work entrusted to the prelate for Italian emigrations. Benedict XV instituted in the monastery of Grottaferrata—shortly after erected as the abbey *nullius*—a seminary for the children of Italo-Greek emigrants and wrote to the Archbishop of Baltimore regarding a seminary for Mexicans in the United States. Pius XI founded a seminary for Russians in Rome. The Ukrainians even have two seminaries in Rome, and several also have been founded in different countries by the mission of Poland for its emigrants. John Paul II has erected seminaries of the Armenian rite in Latin America, Canada and the United States, and another of the Byzantine rite in the United States.

As can be seen, there are many pastoral structures for emigrants that must be kept in mind for the correct understanding of the chaplain for emigrants and of the importance of his office. Many times it will be the local ordinary who assigns the canonical mission to the chaplain for emigrants; but only the initiatives for support existing in the country of origin will allow the availability of chaplains trained to harmonize deeply with the mentality and typical needs of those faithful. On the other hand, the local church, where the emigrants live, has to put into play such varied recourses, according to situation, such as the possible appointment of an auxiliary bishop for emigrants, the erection of personal parishes, the appointment of missionaries with care of souls, and the appointment of chaplains. The exercise of an office with the care of souls is similar to the office of the parish priests, whose faithful are identified by personal criteria of language, nationality or rite, and whose jurisdiction in many cases, is cumulative with the parishes or territorial dioceses of the country where they live.[8]

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8. Cf. SCB, Instr. *De pastorali migratorum cura*, August 22, 1969, art. 23 § 2, in *AAS* 61 (1969), p. 625; A. SOBCZAK, *Las parroquias personales para los emigrantes en el Derecho universal de la Iglesia latina*, pro manuscripto, Pamplona 1993; V. DE PAOLIS, "La mobilità umana e il nuovo Codice di Diritto Canonico," in *On the Move* 45 (1985), pp. 37–58; A. PEROTTI, "Assistance pastorale des migrantes," in *Monitor Ecclesiasticus* 95 (1970), pp. 46–60; J. SANCHIS, "La pastorale dovuta ai migranti ed agli itineranti (Aspetti giuridici fondamentali)," in *Fidelium Iura* 3 (1993), pp. 451–494.

569 **Cappellani militum legibus specialibus reguntur.**

Chaplains to the armed forces are governed by special laws.

SOURCES: c. 451 § 3; SCDS Resp., 8 oct. 1943; *SCCong* Instr. *Sollemne semper*, 23 apr. 1951 (*AAS* 43 [1951] 564); *SCCong* Instr. *Divinum persequens*, 2 iun. 1951 (*AAS* 43 [1951] 565–566); SCR Instr. *Sacrorum Administri*, 2 feb. 1955 (*AAS* 47 [1955] 93–97); *SCCong* Instr. *Per instructionem*, 20 oct. 1956 (*AAS* 49 [1957] 150–163); *SCCong* Decr. *Ad Sacra Limina*, 28 feb. 1959 (*AAS* 51 [1959] 274); *SCCong* Decr. *Sacramentum Poenitentiae*, 27 nov. 1960 (*AAS* 53 [1961] 49–50)

CROSS REFERENCES: cc. 294–297, 369–370, 515, 518

COMMENTARY

Eloy Tejero

Implied in the military profession are several very special life circumstances which make the performance and reception of ordinary pastoral services difficult. Thus, it is understandable that the chaplains to the armed forces have conducted for centuries a specialized pastoral service. Nonetheless, this canon does not state the proper features of canonical governance of pastoral care of the military, so as not to change the prior usages of the particular churches in the various countries. Therefore, in line with c. 451 § 3 of the *CIC*/1917, c. 569 refers this subject to the corresponding special laws.

On April 21, 1986, after the promulgation of the *CIC*, John Paul II gave the general norms regarding the military ecclesiastical structures in each of the countries to which previously had been given a prelate with faculties suitable to his office.[1] It is the first intention of these norms to make them consistent with the road opened by Vatican Council II (*PO* 10) "regarding the initiatives most apt to accomplish special pastoral works."[2]

In agreement with that end, the previously called military vicariates went on to be denominated now *military ordinariates* and, "juridically

1. Cf. *SMC*; A. VIANA, *Territorialidad y personalidad en la organización eclesiástica. El caso de los ordinariatos militares* (Pamplona 1992); J. ACHACOSO BLANCO, *Los Vicariatos Castrenses (su naturaleza en el pasado y en el presente)*, "Excerpta e dissertationibus in Iure Canonico" 5 (1987), pp. 173–243.
2. *SMC*, preface, p. 482.

similar to the dioceses, they are special ecclesiastical circumscriptions that are governed by the proper statutes established by the Apostolic See."[3] Their own ordinary presides as pastor, normally invested with episcopal rank, over this circumscription, and is freely appointed by the Supreme Pontiff, or he installs or confirms the ordinary who has been lawfully designated.[4]

The jurisdiction of the military ordinary is personal, ordinary, proper and cumulative with that of the diocesan bishop in whose diocese each of the faithful has a domicile, even though the military quarters and sites are subject primarily and principally to the jurisdiction of the military ordinary.[5]

The secular priests or religious form the priesthood of the military ordinariate, who, endowed with the relevant qualities to carry out well this special pastoral work, perform an office in the military ordinariate with the consent of their ordinary. For the spiritual and specific pastoral formation of its priests, the military ordinary can erect their own seminary and confer orders upon its students of the ordinariate as well as incardinate other clerics into it.[6]

The chaplains to the armed forces, within their own purview, have the rights and duties of parish priests and exercise their functions, cumulatively with the territorial parish priests, over the faithful assigned to them, as long as they are soldiers or are attached to the armed forces, or are those who live in the houses of the military families, frequent military institutes, live in military hospitals or render services therein.[7]

3. Ibid., art. 1 § 1, p. 482.
4. Cf. ibid., art. 1 §§ 1–2, p. 482.
5. Cf. ibid., arts. 4 and 5, p. 483.
6. Cf. ibid., art. 6, pp. 483–484.
7. Cf. ibid., arts. 7 and 10, pp. 484–485.

570 **Si communitatis aut coetus sedi adnexa est ecclesia non paroecialis, cappellanus sit rector ipsius ecclesiae, nisi cura communitatis aut ecclesiae aliud exigat.**

If a non-parochial church is attached to an establishment of a community or group, the rector of the church is to be the chaplain, unless the care of the community or of the church requires otherwise.

SOURCES: —

CROSS REFERENCES: cc. 556–563, 567 § 2

COMMENTARY

Eloy Tejero

The provision of this canon, which establishes a criterion of confluence of the functions of chaplain and rector in one priest and in one church, is very consistent with the principle of not multiplying ministers to perform functions that, in fact, lack a sufficient reason for diversification. This principle of economy of functions in the situation contemplated by the canon acquires a greater meaning by keeping in mind that the chaplain of a community, pursuant to c. 567 § 2, corresponds to celebrating or directing liturgical functions, but not to meddling in the internal governance of the institute. This accents more the affinity of functions of the chaplain and the rector in the case that the canon contemplates.

571 **In exercitio sui pastoralis muneris, cappellanus debitam cum parocho servet coniunctionem.**

In the exercise of his pastoral office a chaplain is to maintain the due relationship with the parish priest.

SOURCES: SCDS Resp., 8 oct. 1943; scc Instr. *Sollemne semper*, 23 apr. 1951 X (*AAS* 43 [1951] 564); *CD* 43; SCB Decr. *Apostolatus maris*, 24 sep. 1977, I, art. 5 (*AAS* 69 [1977] 737–746)

CROSS REFERENCES: cc. 519, 528–537

COMMENTARY

Eloy Tejero

With the *CIC*'s having emphasized the pastoral scope of the office of chaplain—as an especially nimble tool to bring the solicitude of the Church to the most diverse groups of faithful that require a specialized pastoral service—the union of the chaplain with the parish priest becomes even more necessary. This union cannot be situated uniquely in the subjective purview of a mutual relationship of colleagues. It is necessary that both exchange information regarding people, goals and pastoral methods, keeping in mind that the present law often contemplates the pastoral responsibility of both as one competence of a cumulative character, which is required of those who search for the same end.

572 Quod attinet ad amotionem cappellani, servetur praescriptum can. 563.

In regard to the removal of a chaplain, the provisions of can. 563 are to be observed.

SOURCES: c. 486; *ES* I, 32

CROSS REFERENCES: cc. 192–195, 563, 682 § 2, 1732–1752

COMMENTARY

Eloy Tejero

The reference to c. 563 made by this canon as a norm to keep in mind in relation to the removal of a chaplain can be broadened by keeping in mind cc. 192–195 regarding removal from an ecclesiastical office and others derived therefrom.

Canon 563, which is limited to stating that the removal must be done for a just reason and according to the prudent judgment of the local ordinary, has to be completed pursuant to c. 193 § 1: "No one may be removed from an office which is conferred on a person for an indeterminate time, except for grave reasons and in accordance with the procedure defined by law" and further keeping in mind that "this also applies to the removal from office before time of a person on whom an office is conferred for a determinate time" (c. 193 § 2).

Regarding the procedure to follow in the removal of a chaplain, what appears to be most similar, by reason of the subject, among the provisions of the *CIC*, is what is regulated by cc. 1740–1752 regarding the removal and transfer of parish priests. In any case, since c. 192 says that the removal from an ecclesiastical office must be done by a lawful decree issued by the competent authority—which, pursuant to c. 193 § 4, must be in writing for it to have legal effect—recourse against this decree is the same recourse against administrative decrees, which is considered in cc. 1732–1739.

Likewise, it must be remembered, regarding the removal of a chaplain, that if this office was provided for his sustenance, the competent authority that issues the decree for removal must take care that his sustenance is provided for a suitable time (c. 195). But this provision is not applicable to the cases of removal by the law itself, which is considered in c. 194.

PARS III
De institutis vitae consecratae et de societatibus vitae apostolicae

SECTIO I
De institutis vitae consecratae

SECTIO II
De societatibus vitae apostolicae

PART III
Institutes of Consecrated Life and Societies of Apostolic Life

SECTION I
Institutes of Consecrated Life

SECTION II
Societies of Apostolic Life

INTRODUCTION

Tomás Rincón-Pérez

Part III covers two large sections of two different canonical realities: first, the ICLs, whose common denominator is the profession of the evangelical counsels of poverty, chastity, and obedience through vows or other sacred bonds; and second, the SALs, which, since they do not make a public profession of the evangelical counsels, lack an element essential for being structured as ICLs. These differences were ultimately the reason that called for the regulation of these societies in separate sections. It is well known that, in the revision of the Code, under the generic title "Institutes of Consecrated Life," there are three kinds of societies: religious institutes, secular institutes, and societies of apostolic life. Quite correctly,

the legislator finally chose to regulate the last two in a separate section, thus avoiding the confusion that would have been caused by identifying consecrated life with the societies that do not make a public profession of the evangelical counsels. This separation is not an obstacle because they are similar laws, however, which thus justifies their treatment within this part III. All in all, this deals with the old societies of common life without vows that were also regulated in the *CIC*/1917 in the context of religious life.

In the recent reform of the Roman Curia carried out by the Constitution *Pastor Bonus* of June 28, 1988, the old Congregation of Religious and Secular Institutes came to be called by the same terms as those of the hearing under which all this part III is framed: the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. Its set purpose, consequently, is to promote and regulate the practice of the evangelical counsels as they are already being observed in the religious and secular ICLs, and at the same time, the activities of the SALs.

An issue that was the object of considerable attention in the codifying work cannot be overlooked in the comprehensive analysis of part III. We refer to the legislator's choice of the systematic placement of all this material and his reason for doing so. This leads us to investigate the ecclesiastical scope of this within the context of the Code, in which the distinct components of the people of God are contemplated.

It is well known from the *schemata* prior to the final version (including the 1980 *schema)* that this third part contained the entire associative ecclesial phenomenon. Hence, the general title "De consociationibus in Ecclesia" comprised three sections: religious and secular consecrated life, the societies of apostolic life, and other associations of the faithful. But finally the criterion was adopted to distinguish systematically the associations of the faithful, which are regulated in part I of book II and the associated phenomena of a consecrated and similar nature which make up part III. The adoption of this last systematic criterion seems on all accounts to be correct if it is kept in mind the great differences (as seen from any point of view) between a mere association of faithful and a religious association. Though perhaps only for historical reasons, it would have not been appropriate to put the two associative phenomena on the same level.

But the basic question lies in finding out whether the position that the religious institutes, the secular institutes, and the societies of apostolic life finally occupied in the Code follows a particular ecclesiological option consistent with the configuring of religious life as an essential element of the basic structure of the people of God, or whether it is a practical way of emphasizing not only the historical relevance of religious life, but also (and especially) the high mission to be accomplished within the ecclesial missions without resorting to a legislative option of configuring religious life as an essential constituent of the people of God.

In the alternative way we have posed the question, it is readily seen that there are two different doctrinal positions regarding this matter. For example, while the systematic ordering of the Code was being sorted out, W. Aymans advocated the necessity of distinguishing between structures of constitution and structures of association and, consequently, the appeal of having a system that agreed with that distinction. Indeed, he showed the advantage of clearly differentiating what is *structura Populi Dei* from what is merely *structura in Populo Dei* by organizing the entire ecclesial associative phenomenon (including the religious associative phenomenon) in a separate book.[1] Once the Code was published, the Central European canonist reiterated his conviction that "the only relevant distinction, constitutionally speaking, is that between clerics and lay faithful."[2]

In the face of this reasoned argument, and referring only to canonists, E. Corecco has repeatedly maintained that the Code has accentuated the *constitutional* character of what he calls the state of the evangelical counsels by situating their rules in part III of book II, on one hand, having separated them from the juridical context of the associations in general, and on the other, having compared the rules *institutionally* to the lay and clerical state of parts I and II of the same book.[3]

These two postures, presented as examples, have become a reflection of what was present in the conciliar hall during the editing of chapters V and VI of *Lumen gentium* and, more specifically, of this text of the above-mentioned Constitution: "This form of life has its own place in relation to the divine and hierarchical structure of the Church. *Not, however, as though it were a kind of middle way between the clerical and lay conditions of life*" (n. 43).

In this sense, it is certain that after full debate, the conciliar Fathers deliberately inserted the clause *et hierarchicae* to show that the constitution of the Church is really not only hierarchical but also charismatic. But it is not so clear that by such insertion the Council intended to resolve the doctrinal question regarding the religious state belonging in the divine constitution of the Church. Along with the Council Fathers who thus affirmed its inclusion were those who, without denying the charismatic dimension of the Church and according to the well-known clause: "sunt structura in Ecclesia, non sunt structura Ecclesiae ipsius," considered the

1. Cf. W. AYMANS, "Der strukturelle aufbau des Gottes Volkes," in *Archiv für Katholisches Kirchenrecht* 148 (1979), pp. 21–47; idem, "Ekklesiologische leitlinien in den entwürfen für die neue gesetzgebung," in *Archiv für Katholisches Kirchenrecht* 151 (1982), pp. 25–57.

2. Cf. W. AYMANS, "La Iglesia en el Codex. Aspectos eclesiológicos del nuevo Código de la Iglesia latina," in *Burgense* 26 (1985), p. 222.

3. Cf. E. CORECCO, "Aspetti della ricezione del Vaticano II nel Codice di Diritto canonico," in *Il Vaticano II e la Chiesa*, a cura di G. ALBERIGO-J.P. JOSSUA, (Brescia 1985), p. 355; idem, "Il laici nel nuovo Codice di Diritto Canonico," in *La Scuola Cattolica* 112 (1984), p. 203.

religious state as a structure within the Church which was not a part of the Church's structure itself.[4]

It was no secret to anyone that all this was intimately connected with the question of the origin of the religious state. For those who maintained that the religious state has a divine origin, the basis of their argument lay in understanding the religious state as a preexisting reality in its historical structure, whose origin would go back to the Church's birth itself. Prior to Vatican Council II, Pope Pius XII echoed this question when he asked what might be the place of the religious state in the Church, and made the following statement: "Divino ipso iure statutum est ut clerici distinguantur a laicis. Inter duos hos gradus religiosae vitae status intericitur, qui, ecclesiastica origine defluens, ideo est atque ideo valet, qua arcte proprio Ecclesiae fine cohaeret, qui eo spectat, ut homines ad sanctitatem consequendam perducantur ..."[5]

In our judgment, to ponder the existence of a religious state of divine origin prior to its historical-canonical configuration is nothing more than to formulate the fundamental characteristics of the Christian person that are expected to be found in every good disciple of Christ: for example, the call to sanctity or to the radical following of Christ; the appeal to live the evangelical counsels, even the eschatological testimony itself; being witnesses to the Resurrection and the transcendent meaning of existence. These are elements that serve to describe the life of anyone who is baptized. They begin to be essential elements of the religious person, that is, they begin to be lived *modo peculiari, modo religioso* when they are institutionalized. That means that such institutionalization does not occur in a specific historical moment with the purpose of organizing something preexisting since the very origin of the Church, but that it is something innate and determinant of its own existence insofar as being *particular and proper* to the way of the Christian person. The radical following of Christ or the practice of the evangelical counsels begin to be specific features of that Christian called *religious* when the form of life of that Christian acquires a certain canonical configuration. This acquisition happens in a specific historical moment after the founding of the Church and is essentially composed of the pastors, their flock, and the many gifts and charisms that give shape to the entire people of God.

In view of all these summarily explained facts, we think the legislative choice, taken at the last moment, to regulate separately the associations of the faithful and the associations of consecrated life was a good one. Putting such different associative phenomena on the same level would have shown a glaring lack of understanding of both the current and historic high mission of religious life. But that important and autonomous

4. Cf. F. RETAMAL, *La igualdad fundamental de los fieles en la Iglesia según la Const. "Lumen Gentium" (estudio de las fuentes)* (Santiago de Chile 1980).
5. Aloc. *Annus Sacer*, December 8, 1950, in *AAS* 43 (1951), 28.

position in the Code should not be interpreted as a final reinforcement of the thesis that describe the religious state as one of the three basic pillars upon which is based the fundamental structure of the people of God.

The institutional content itself of this part III of book II is a demonstration of the relative character that is given to the organization of the Code. In effect, that autonomous part is incorporated, not only through the religious institutes, but also through the secular institutes and the societies of apostolic life. In this way the hypothetical "structural" charism of consecrated life, different from the charism of secularity, remains obscured in a group of institutions whose charisms could hardly constitute a basic structure of the people of God.

In any case, those varied forms of Christian life which have their origins in particular charisms indisputably belong to the life and holiness of the Church; but they are not part of the constitutional structure of the Church, nor are they the institutional version of a fundamental state without which the Church could not exist. It is certain that since its founding the Church, as well as the hierarchy, has been essentially charismatic. But in this regard one must not confuse the divine constitution, that which is derived from the founding will of Christ, and whose structural power lies in the sacraments and the proper law, with the divine action of the Holy Spirit, who works by means of gifts and charisms. These can be (and in fact are) the foundation of certain ecclesiastical structures such as those contemplated in part III; however, that does not mean that they are constitutional structures *iure divino*.

Up to this point we have referred to the ecclesiological position of the religious state, or more precisely, of the consecrated state as contemplated in this part III. Because of its intimate connection with this question, it is necessary for us to stop now to analyze what essentially characterizes sacred life from the perspective of Vatican Council II.

In this regard it is well known that for centuries the calling to holiness was very much tied to what is called the "state of perfection," which is the public profession of the evangelical counsels, that is, to religious life.

It is also well known that the Council, as emerged from the development of chapters. V and VI of *Lumen gentium*, deliberately suppressed the term "state of perfection" to avoid making any suggestion that Christian perfection is a monopoly reserved to a canonical state, which would have contradicted the principal of equality regarding holiness that was proclaimed by the Council itself.[6]

This Conciliar approach must have had strong repercussions in the subsequent theological-canonical discussions regarding the essential

6. Cf. F. RETAMAL, *La igualdad fundamental*... cit., p. 314ff.

constituents of religious life. An important milestone in those discussions was the theory regarding the so-called "evangelical radicalism." This theory is built on these two postulates: the acceptance, as a point of departure, of the universal call to holiness and the distancing from the traditional doctrine of the evangelical counsels as that which characterizes and serves as the foundation of religious life. It is not this or that evangelical text or this or that counsel that Christ posed to all Christians that constitutes the beginning moment of the religious state; rather it is the comprehensive content of the Gospel, that is, the evangelical calling to radicalism in the following of Christ as a *permanent form of existence*. Surely this theory recognizes that all Christians are called to live that radical life, but some do so when the situation or the circumstances demand it, while religious assume it as a permanent form of living. The essence of the religious state is rooted in this latter circumstance.[7]

Thus described, the theory of radically following Christ in reference to consecrated life does not seem to overcome the traditional schemes regarding the states of perfection. There is a strong tendency to configure that state, not so much *a* radical following of Christ (which no doubt it is), but as rather as *the* radical following of Christ, which admits no limits of circumstances or time,[8] for only in this way can a true radical following of Christ be spoken of.

Once the call to holiness and to the evangelical radicalism which that holiness implies is fully accepted, these callings cannot be the elements that characterize religious life, but rather they reflect religious life's particular ecclesial function and the various ways of living the radicalism which that particularity implies. Said another way, with respect to holiness and radicalism, there is no room in the Church for relationships of superiority, but only of particularity according to one's own vocation, and consequently, according to the perspective in which each of the faithful is situated in relation to the Church and the world. Therefore, what characterizes a particular condition of life is not radicalism itself, but a different way of radical living. Likewise, the evangelical counsels are not what characterize a particular condition of life, but the particular way they are assumed, according to the vocation and mission of each Christian, constitutes the radicalism.[9]

In *Christifideles laici*, Pope John Paul II calls those *relationships of particularity* different manners of living that are unified in the mystery of communion: "In the Church-*Communio* the states of life, by being ordered

7. Cf. J.M.R. TILLARD, *El proyecto de vida de los religiosos* (Madrid 1975); TH. MATURA, *El radicalismo evangélico* (Madrid 1980).

8. Cf. J.L. ILLANES, *Llamada universal a la santidad y radicalismo cristiano (VIII Simposio de Teología)*, (Pamplona 1987), pp. 803–824.

9. Cf. T. RINCÓN-PÉREZ, "Institutos de vida consagrada y sociedades de vida apostólica," in *Manual de Derecho Canónico*, chap. V, 2nd ed. (Pamplona 1991), pp. 217–278.

one to the other, are thus bound together among themselves. They all share in a deeply basic meaning: that of being the manner of living out the commonly shared Christian dignity and the universal call to holiness in the perfection of love. They are different yet complementary, in the sense that each of them has a basic and unmistakable character which sets each apart, while at the same time each of them is seen in relation to the other and placed at each other's service" (*CL* 55).

In the more recent *Pastores dabo vobis,* the Pope has referred to the holiness and radicalism that characterize the priestly condition. But before pointing out the features that define and specify the holiness of priests, as well as the modalities proper to their radical following of Christ, the Roman Pontiff was quick to make clear, following the Council, what is common to every Christian.[10]

In effect, it has been revealed and communicated to all the members of the people of God "the *fundamental calling* which the Father addresses to everyone from all eternity, the calling to be holy and blameless before him … in love" (*PDV* 19). Likewise, "for all Christians without exception, the radicalism of the Gospel represents a fundamental, undeniable demand flowing from the call of Christ to follow and imitate him by virtue of the intimate communion of life with him brought about by the Spirit" (*PDV* 27).

Since the calling to holiness and the fundamental demand of evangelical radicalism are common to every Christian, the essence of the consecrated state does not lie there, nor will that perspective be the most appropriate way to characterize that state. Instead, the consecrated state will be characterized by the particular ecclesial function that it is called on to fulfill and by the ways proper to Christian existence which that function implies. Just as the lay vocation places the faithful in the secular perspective, and the priestly vocation situates them in a ministerial perspective, so the religious vocation places them in an eschatological perspective, changing them into a sign of the new life and the eternal victory through the redemption of Christ. This perspective will be what characterizes the way to live radicalism in the ICLs, but with features clearly distinguished according to whether the institutes are religious or secular.

Two relatively recent papal documents are important in the discussion of ICLs and SALs: the Encyclical *Veritatis Splendor* of August 6, 1993 and, especially, the Apostolic Exhortation *Vita Consecrata* of March 25, 1996, the result of the Synod of Bishops held in October of 1994.

John Paul II wrote *Veritatis Splendor* in order to address some fundamental aspects of Catholic moral teaching from the standpoint of sacred scripture and the living tradition of the Church. It is particularly

10. Cf. T. RINCÓN-PÉREZ, "Sobre algunas cuestiones canónicas a la luz de la Ap. Exhort. 'Pastores dabo vobis'," in *Ius Canonicum* XXXIII (1993), pp. 315–378.

relevant to this commentary that the first chapter of that encyclical, which serves as an introduction for the reflection on moral truth, employs the biblical passage of the "rich young man" from Matt. 9:16 as its springboard. The Pope provides a detailed analysis of the passage to underscore that all of Christian morality is a morality of perfection: "This vocation to perfect love is not restricted to a small group of individuals. The invitation, 'go and sell your possessions and give the money to the poor,' and the promise 'you will have treasure in heaven,' are meant for everyone, because they bring out the full meaning of the commandment of love for neighbor, just as the invitation which follows, 'Come, follow me,' is the new, specific commandment of love of God" (n. 18). The encyclical adds that the way and content of perfection consists of following Jesus, knowing that Jesus himself takes the initiative in calling individuals to follow him: "His call is addressed first to those to whom he entrusts a particular mission, beginning with the Twelve; but it is also clear that every believer is called to be a follower of Christ (cf. Acts 6:1). Following Christ is thus the essential and primordial foundation of Christian morality ..." (n. 19).

This pontifical reflection on our Lord's encounter with the "rich young man" is especially important in that it corrects a rather simplistic interpretation of restricting the call of the lay faithful to that of observing the commandments, while applying the radical promise of leaving all to follow Christ *exclusively* to those with a religious vocation.

Nevertheless, *Vita consecrata* is even more germane to this commentary, inasmuch as it directly pertains to the consecrated life. The document furnishes doctrinal considerations about the nature of consecrated life and its ecclesiological status. Of interest from the canonical point of view is the Roman Pontiff's announcement of possible disciplinary reforms. Some of these reforms have already been carried out, as in the case of new norms regarding the Papal Cloister.

a. In connection with the doctrinal considerations, here are some facts that may provide guidance for later reflection:

(i) The Apostolic Exhortation does not employ the term *state of perfection* with respect to the consecrated life, and this expression, in fact, has been deliberately deleted in *Lumen gentium*. The concept, however, appears to be implied when the *objective excellence of consecrated life* is alluded to, at least on two occasions (cf. nos. 18 and 32).

(ii) As taught in Vatican Council II (*LG* 44), the profession of the evangelical counsels "undeniably belongs to the life and holiness of the Church." This means, stresses the Pope, that "the consecrated life, present in the Church from the beginning, can never fail to be one of her essential and characteristic elements, for it expresses her very nature" (no. 29). At the end of this same section, the John Paul II is even clearer: "The idea of a Church made up only of sacred ministers and lay people does not there-

fore conform to the intentions of her divine Founder, as revealed to us by the Gospels and the other writings of the New Testament."

(iii) In two places the Pope explicitly refers to the relationship of the consecrated life relative to (non-consecrated) clergy and lay people as *paradigmatic.* First, the Pope points out in n. 16 that the consecrated life serves as a paradigm in its eschatological function. Then in n. 31, he places emphasis on the "special conformity [of the consecrated life] to Christ, chaste, poor and obedient," whereas the lay faithful "have as their specific but not exclusive characteristic, activity in the world; the clergy, ministry."

(iv) The distinct characteristic of secular institutes is what the Pope calls the synthesis of secularity and consecration (cf. n. 10). Further, "Consecrated persons in *Secular Institutes* contribute in a special way to the coming of the Kingdom of God; they unite in a distinctive synthesis the value of consecration and that of being in the world" (n. 32).

(v) "Also worthy of special mention," the Apostolic Exhortation points out, "are Societies of Apostolic Life or of common life, composed of men or women," although "the specific nature of their consecration distinguishes them from Religious Institutes and Secular Institutes" (n. 11).

b. In connection with disciplinary matters, the following points from *Vita consecrata* should be noted:

(i) The Roman Pontiff provides therein criteria for the proper interpretation of c. 605, which speaks to the eventuality of new forms of consecrated life, and he advises that a commission be created for such purpose (cf. nos. 12 and 62). The Pope also establishes that, as a fundamental principle of consecrated life, "the specific features of the new communities and their styles of life must be founded on the essential theological and canonical elements proper to the consecrated life," according to c. 573 of the *CIC* and c. 410 of the *CCEO* In this sense, John Paul II states, "… those forms of commitment which some Christian married couples assume in certain associations and movements ... cannot be included in the specific category of the consecrated life." The sacred bond of absolute chastity is an unavoidable requirement of consecrated life for the Kingdom, "rightly considered the 'door' of the whole consecrated life" (n. 32).

(ii) The expression *lay institutions* in c. 583 § 3 did not seem the most appropriate to the synodal Fathers; the Holy Father therefore suggests in *Vita consecrata* that the term *religious institutes of brothers* be used instead (cf. no. 60). What is important in this regard, however, is that the Exhortation refers to a new category not set forth in the code, namely, *mixed institutes,* where all the religious, priests and non-priests, have equal rights and obligations, except for those derived from the sacrament of orders. The Pope institutes a *special commission* to resolve problems; on the basis of that commission's conclusions, appropriate decisions may be made automatically. (cf. n. 61).

(iii) The Pope, after praising the tradition of cloistered nuns, echoes the indications of the synod regarding the advisability of amending some norms of papal enclosure, as contained in the Instruction *Venite seorsum* of 1969. This announced revision (cf. n. 59) has already been carried out through the publication of the Instruction *Verbi Sponsa*, of May 13, 1999.

Part I of the 1999 Instruction discusses the meaning and value of the cloistering of nuns, from an ascetic as well as ecclesial point of view. Part II discusses the various types of cloisters and provides new practical norms of papal cloister which apply to nuns of the fully contemplative life. Part III refers to fidelity to the charisma, guaranteed by proper formation as well as by the safeguarding of the just autonomy of each monastery. In this regard, the norms give special attention to the relationships with the male institutes with which some monasteries of nuns may be associated (cf. n. 26). Finally, Part IV discusses associations and federations of monasteries. Canons 582, 614–615 and, in particular, 667 §§ 3 and 4 are affected by the norms of the 1999 Instruction.

SECTIO I
De institutis vitae consecratae

SECTION I
Institutes of Consecrated Life

INTRODUCTION

Tomás Rincón-Pérez

The sacraments, especially those that imprint a character, that is, the sacraments of baptism, confirmation, and sacred orders, cause the persons who received them to become consecrated. In these cases, one is dealing with sacramental consecrations. But historically the restricted notion of consecration has been reserved for those persons who have made a public profession of the evangelical counsels of poverty, chastity, and obedience, generally in the associative form of a religious institute, but by exception in an individual form as is the case of eremitic life. Until the middle of the twentieth century, this notion of being consecrated was exclusively tied to the concept of religious life. Although the use of the term *religious* or *religious life* was more usual, *consecrated* or *consecrated life* was also used since they were synonymous concepts, completely equivalent: every religious life was consecrated life as was the inverse, every consecrated life was religious life.

Nowadays this equivalence is no longer absolute since, as is explained in this sec. I: it is appropriate to say that religious life is consecrated but it cannot be said that every life consecrated by the evangelical counsels is religious life. In effect, the ICLs contemplated here cover two distinct kinds: the *religious* ICLs and the *secular* ICLs. This conceptual and disciplinary change began when Pope Pius XII promulgated the Constitution *Provida Mater* on February 2, 1947, and the secular institutes, a new form of non-religious consecrated life, burst into the life of the Church.

2. To understand the scope of this change, it is necessary to situate it in its historical context. Let us look, therefore, at the most important milestones of this historical development of consecrated life, including Vatican Council II itself and the work of codification.

For many centuries religious or consecrated life was expressed in extremely varied forms and was regulated through very different juridical

regimens. Just think, for example, of the monastic contemplative life, the canons regular, the mendicant orders of the thirteenth century, or of the clerics regular of the sixteenth century. All these forms of life are classified under a unique denomination: all are religious orders because in all those forms (monks, friars, regular clerics) there exists a common and constitutive element, that is, the taking of solemn vows, which, in those times, was the only accepted form of religious consecration.

From the sixteenth century especially, a process of transformation of the forms of religious life was entered upon, in which factors of an intra-ecclesial nature undoubtedly had a bearing. Likewise, other extra-ecclesial factors influenced the transformation, such as the consolidation of the modern state, the beginning of the secularization process of the juridical and political institutions, and the consequent distinctions made between the canonical order and the secular order, with the natural influence of the effects of the solemn vow upon extra-ecclesial operational capacity.

The final result of that process was the birth of a new form of religious life: the religious congregations of simple vows. Their final and official approval took place on December 8, 1900 by virtue of the Apostolic Constitution *Conditae a Christo* of Leo XIII, which is rightfully called the Magna Carta of the religious congregations. The *CIC*/1917 had already categorized them among the *religiones*, and considered their members as true religious. The solemnity of religious profession would continue to have special canonical effects but it would no longer affect the essence of the religious bond, which had been transferred from the solemn vow to the public vow.

Prior to the promulgation of the *CIC*/1917, certain *secular* forms of religious life had begun to proliferate.[1] Here as well, besides theological or canonical factors, there are factors foreign to the ecclesial dynamic proper found in the origins of these new forms. The French Revolution, for example, created special difficulties for the survival and public work of the religious orders. Perhaps for that reason, there arose institutes that did not incorporate into their rule some of the elements considered essential to religious life such as common life, public vows, or the habit. Although ecclesiastical authority was opposed in principle to such *secular* forms of religious life, in fact some of those associations obtained formal approval. In any case, the fact that those secular associations were not accommodated juridically in the *CIC*/1917 did not impede successive phenomena of this kind or another kind from continuing to appear in the life of the Church. All this crystallized in the so-called secular institutes whose Magna Carta, the Apostolic Constitution *Provida Mater*, promulgated by

1. Cf. T. RINCÓN-PÉREZ, "Evolución histórica del concepto canónico de 'secularidad consagrada,'" in *Ius Canonicum* XXVI (1986), pp. 675–717; L. GUTIÉRREZ, "Evolución de las formas seculares de vida religiosa," in *Vida Religiosa* 27 (1969), pp. 9–16 and 311–318.

Pius XII on February 2, 1947, was the fruit of a necessary but temporary compromise because, as its subsequent evolution demonstrated, it intended to cover very different institutions

3. In view of this historical evolution of religious and consecrated life, it is appropriate to ask ourselves about the scope the Council afforded the concept of consecration and its repercussions in the revision of the Code. There was no lack of authors in this regard who criticized the reforms that put the *religious* and *secular* forms under the same heading. In the Code, A. Bandera wrote: "Not all of this seems very clear to me. By placing the religious institutes under the generic concept of 'institutes of consecrated life,' an ambiguity is introduced that, if I am not mistaken, diminishes the ecclesial assessment of religious life. I think, further, that the category *consecrated life*, without intending to and without wanting to, leads to inconsistencies between the *CIC* and Vatican Council II, and although the latter is a source of the former, it is not always followed. While I express this opinion, I can only wish that I am mistaken."[2]

It had been a common opinion that the Council, in chap. VI of *Lumen gentium*, under the rubric "De Religiosis," did not refer exclusively to religious in a strict sense, but to every life consecrated to God through evangelical counsels assumed by vows or other sacred bonds, and therefore the secular institutes were included.[3]

In the genesis of the conciliar decree *Perfectae caritatis*, there are also important facts that did not go unnoticed. In the presentation of the text of the decree in the Conciliar Hall, it became clear that in the term *religious life* (the title was stated this way) were included all those who were searching for perfection through the profession of the evangelical counsels, including, therefore, members of the secular institutes. The confusion that this could have caused made some council fathers to propose changing the title. But the proposal was not accepted and consequently, the concept of *religious life* appeared again in the decree, as it did in *Lumen gentium*, in the broad sense of *consecrated life*, with two different forms: religious and secular. This differentiation remained clearly established in the decree on the eve of its promulgation on October 28, 1965. In effect, Msgr. Felici communicated to the council fathers that the text of the decree (*PC* 11) which had already been distributed and that was to be voted on the next day, had inadvertently omitted a reference to the secular institutes. That reference stated as follows: said institutes "quamvis non sint instituta religiosa, veram tamen et completam..." Undoubtedly, this

2. A. BANDERA, "Eclesiología de la vida religiosa. ¿Hacia un retroceso?," in *Angelicum* 66 (1989), pp. 577–602.

3. Cf. J. BEYER, "L'avvenire degli istituti secolari," in *Secolarità e vita consagrata* (Milan 1966), pp. 263–329; J.M. CASTAÑO, "Naturaleza de los institutos seculares a la luz del Vaticano II," in *Revista Española de Derecho Canónico* (1966), pp. 217–239.

last-minute amendment would influence decisively the final drafting of the Code.[4]

In effect, one of the obstacles that the Revision Commission, being entrusted with this subject, had to overcome was to decide the title or rubric under which this whole subject would be placed.

The rubric "Institutes of Perfection" was not acceptable. The principle of the universal calling to holiness proclaimed by the Council argued against any localization of Christian perfection in a specific social class. Although they were indisputably institutes of perfection, the risk of configuring them as *the* preeminent institutes of perfection had to be avoided. To avoid this, the term "state of perfection" was deliberately suppressed by the Council.

Although the Code had to give juridical backing to two forms of non-associated consecrated life: eremitic life (c. 603) and the order of virgins (c. 604) it opted from the beginning for an institutional or associative focus for which the rubric "De religiosis" of the *CIC*/1917 and chap. VI of *Lumen gentium* was not appropriate in a technical sense. Once the Commission opted for situating the secular institutes in this part, the rubric *religious institutes* was not appropriate either because technically it could not have covered the secular institutes, keeping in mind that the Council had defined them as *non-religious*. Therefore, the rubric "Institutes of Consecrated Life" was chosen inasmuch as it was a generic concept that encompassed both religious and secular institutes. The generic or common concept is described and regulated in tit. I, while the two following titles comprise the two different forms of expressing consecrated life: religious institutes (tit. II) and secular institutes (tit. III).

4. Cf. T. RINCÓN-PÉREZ, "Evolución histórica...," cit. p. 695.

TITULUS I
Normae communes omnibus institutis vitae consecratae

TITLE I
Norms Common to All Institutes of Consecrated Life

573 **§ 1. Vita consecrata per consiliorum evangelicorum professionem est stabilis vivendi forma qua fideles, Christum sub actione Spiritus Sancti pressius sequentes, Deo summe dilecto totaliter dedicantur, ut, in Eius honorem atque Ecclesiae aedificationem mundique salutem novo et peculiari titulo dediti, caritatis perfectionem in servitio Regni Dei consequantur et, praeclarum in Ecclesia signum effecti, caelestem gloriam praenuntient.**

§ 2. Quam vivendi formam in institutis vitae consecratae, a competenti Ecclesiae auctoritate canonice erectis, libere assumunt christifideles, qui per vota aut alia sacra ligamina iuxta proprias institutorum leges, consilia evangelica castitatis, paupertatis et oboedientiae profitentur et per caritatem, ad quam ducunt, Ecclesiae eiusque mysterio speciali modo coniunguntur.

§ 1. Life consecrated through profession of the evangelical counsels is a stable form of living, in which the faithful follow Christ more closely under the action of the Holy Spirit, and are totally dedicated to God, who is supremely loved. By a new and special title they are dedicated to seek the perfection of charity in the service of God's Kingdom, for the honour of God, the building up of the Church and the salvation of the world. They are a splendid sign in the Church, as they foretell the heavenly glory.

§ 2. Christ's faithful freely assume this manner of life in institutes of consecrated life which are canonically established by the competent ecclesiastical authority. By vows or by other sacred bonds, in accordance with the laws of their own institutes, they profess the evangelical counsels of chastity, poverty and obedience. Because of the charity to which these counsels lead, they are linked in a special way to the Church and its mystery.

SOURCES: § 1: c. 487: *LG* 42–44; *CD* 33; *PC* 1; *RC* 1; *ET* 7; *MG*: 567–568
§ 2: cc. 487, 488,1°; *LG* 43–45; *PC* 5; *AG* 18

CROSS REFERENCES: cc. 207 § 2, 574, 603, 604, 607, 710

COMMENTARY

Tomás Rincón-Pérez

1. The notion of consecration has multiple meanings. Consecrations derived from the sacraments of baptism, confirmation, and holy orders acquire special importance in the Church. The liturgy speaks of sacred times and places, of sacred images, and of other sacramentals through which individuals or families consecrate themselves to the Sacred Heart of Jesus, for example.

Nevertheless, for centuries this idea has been applied specifically to the faithful who devote themselves to God and to the service of the Church through the profession of the evangelical counsels of poverty, chastity, and obedience. In this precise canonical sense, consecrated life, until recent times, was identified with religious life and therefore necessarily implied a separation from temporal affairs in order to become totally dedicated to God. With the establishment of the secular institutes in 1947, the idea of consecration acquired a broader content whose general characteristics c. 573 tries to describe.

2. In effect, we are offered in this canon a common or generic concept of consecrated life that is equally applicable to the two kinds of consecrated life: the religious institutes and the secular institutes. Both forms have as a common denominator being institutes of consecrated life, that is, consecration through the evangelical counsels. The differing denominator, that is, that which distinguishes and specifies each of those forms, is contemplated further on, in the two following titles of this section.

Within that general statement, the canon gathers together all those elements, both theological and canonical, that define consecrated life, that identify it and distinguish it from any other form of consecrated life established through the reception of baptism, confirmation, or holy orders. Nowadays it is important to emphasize this distinction given that, as the Revision Commission emphasized when it edited this canon, there are certain sectors that erroneously strove to compare consecrated life through public profession of the evangelical counsels with consecrated life through the reception of baptism, thus leaving the former without content or a reason for being.

3. Among the defining elements of consecrated life that are contained in this canon, some have a theological flavor, while others are strictly canonical. A canonical reality never runs out of juridical adornments. Thus it would not be an appropriate description of consecrated life if it were only focused on canonical elements; but neither would just the theological elements of consecrated life give us a complete and exact description of that kind of Christian life. Precisely because consecrated life consists of a *specific* way of living the Christian life and the radical following of Christ, it conforms to a specific charism, the definition of which as well as its juridical configuration are necessary in order to discover and know that ecclesial reality. Thus, it is appropriate to say that c. 573 renders a *theological-canonical* description of consecrated life, which is the only adequate definition of that reality.

The following elements stand out among those that could be rightly called *theological:*

a) total consecration to God, who is supremely loved and the following of Christ more closely under the action of the Holy Spirit;

b) the glorification of God;

c) the building up of the Church and the salvation of the world;

d) realizing the perfection of charity; and

e) eschatological significance.

If all these elements are read in the context of the universal call to holiness and of the active and necessary participation of all the faithful in the building up of the Church and the salvation of the world, then they can only describe the reality called *consecrated life*, that is, they can only be differentiating elements with respect to the other ways of living the Christian life; but when properly canonical elements are added to those theological elements, the combination marks a particular condition of life within the Church. It is very difficult not to agree that all the faithful, by their rebirth in Christ, that is, by their baptismal consecration, have dedicated themselves totally to God, who is supremely loved, and have directed their entire life to the glorification of God, one and three. Whatever may be a person's condition in the Church, the original vocation is to be an active subject in the building up of the Church for the salvation of the world. All are called to seek the perfection of charity, to be witnesses to the resurrection and, consequently, to the transcendent and eschatological meaning of life.

All this is a consequence of the universal calling to holiness as already proclaimed by the Council. Note in this regard that when the council fathers speak of the call to holiness, which is addressed to everyone, they are referring to a real and true holiness, even in its heroic degree. It is certain that in the conciliar debates, just as the concept of the state of perfection by which religious state was defined in the first *schemata* of the

Constitution *Lumen gentium* (chapters V and VI) was deliberately suppressed, so also was the expression *eadem sanctitas* which indicated that holiness, being one state of perfection (though not the same for everyone), admits a quantitative gradation, not because of different states of life, but because of the vocation and the extent to which gifts are received. On arguing the prudence of deleting the mentioned expression, the relator at the same time warned that within the concepts "fullness of Christian life" and "perfection of charity" to which all are called, is included the concept of *heroic holiness,* which is not a holiness removed from virtuous acts.[1] As G. Thils pointed out during the years the Council was in session: "The gift of God can exist in different degrees. People can make various responses, but there are not two or three kinds of Christian holiness, one for religious and another for priests and a third for the secular pious."[2] In this regard the words of an illustrious expert on the Council are meaningful: "Care must be taken against conceiving religious life as a superbaptism: the Council was very concerned about that. In truth, to hand oneself over to God (and therefore consecrate oneself to Him completely) is the duty of every Christian life. So one must be careful when it is said that a religious faithful (man or woman) is entirely given to God, while the faithful would not be and not even able to be entirely given to God."[3]

4. This matter being such as it is, we must ask ourselves about the scope that any comparative applications to consecrated life has in the Council, especially in *Lumen gentium* 42 and 44. For certain authors,[4] the suppression of the term "state of perfection" has been compensated for by the employment of the comparatives, as found in c. 573: consecrated faithful "following Christ more closely under the action of the Holy Spirit ..." Superiority is seen to be founded in those comparatives, the greatest degree of holiness being objectively ascribed to the consecrated state or evangelical radicalism, concerning the religious state exclusively. But such cannot be its meaning since it would mean that it would not be possible for other faithful to live their baptism radically, thus contradicting the conciliar doctrine. For this reason, two things should be made clear in this regard:

a) that the majority of those comparatives do not have another canonical state as a term of comparison. This does not mean that the consecrated are called to follow Christ more closely than the lay faithful or the priests. The *more closely* has as its point of comparison its own subject, called to follow Christ, that is, its own personal vocation. It would be a

1. Cf. F. RETAMAL, *La igualdad fundamental de los fieles en la Iglesia según la Const. "Lumen gentium" (Estudio de las fuentes)* (Santiago de Chile 1980), p. 321.
2. *Santidad cristiana* (Salamanca 1964), p. 13.
3. Y. CONGAR, "Bautismo, sacerdocio y vida religiosa," in *Teología y Vida* IX (1968), p. 8.
4. Cf. E. GAMBARI, *Vita religiosa secondo il Concilio e il nuovo Diritto canonico* (Rome 1985), p. 89; A. BANDERA, O.P., "Radicalismo evangélico o pluralismo de la santidad," in *Confer* XI (1972), p. 42.

matter of *comparatives of growth*, as a certain author[1] calls them, with a scope similar to the comparative employed by *Lumen gentium* 41, referring to priests and workers: through their ministry and daily work, such faithful must move toward a *higher* holiness;

b) there exist other comparatives in the conciliar Constitution that have as a term of comparison the religious state, on one hand, and the other states or conditions of life on the other. Such is the case of this well-known text of *Lumen gentium* 44: "The religious state, whose purpose is to free its members from earthly cares, more fully manifests to all believers the presence of heavenly goods already possessed here below. Furthermore, it not only *witnesses* to the fact of a new and eternal life ... but it *foretells* the future resurrection." But looking at it closely, this conciliar text does not show a comparative relationship of superiority. The passage "to free its members from earthly cares ... manifests ... witnesses ... fortells" does not express a greater degree of holiness, but a greater public testimony to the eschatological character of the Church. Thus emphasis is placed on the more genuine reason for being of the religious state or consecrated state in general—the particular function that it is called to perform in conjunction with the ecclesial missions.

5. With the basic question thus described, the aforementioned conclusion, in our judgment, appears more clear: the many theological factors that consecrated life entails properly define it only when the factors of a canonical nature that are summarily stated in c. 573 are added to them as are summarily stated in c. 573:

a) Consecrated life is configured as *a stable form of living* which entails a specific juridical situation within the people of God, also known as a canonical *state*. Those who belong to this state are, according to c. 207 § 2, "Christ's faithful who, professing the evangelical counsels through vows or other sacred bonds recognized and approved by the Church, are consecrated to God *in their own special way*." This reference to *status* does not only cover religious (cf. c. 574) but the members of the secular institutes, as well. Therefore, a *religious state* does not exist uniquely; rather, there exists a *status consecratorum*.

b) The life consecrated by the evangelical counsels is that which is lived in an institute canonically erected by the competent authority of the Church. Such institutes belong canonically to the genre of the *associations*. However, given the charismatic nature of these institutes and the requirement of divine vocation and stability of life which they entail, the legislator has preferred to situate their canonical regimen in a place apart from the rest of the associations of the faithful. The religious institute is

1. Cf. L. CABIELLES DE COS, "Vocación universal a la santidad y superioridad de la vida religiosa en los caps. V y VI de la Const. Lumen Gentium," in *Claretianum* XIX (1979), pp. 87–88.

explicitly defined as a society (c. 607 § 2), and secular institutes have the same associative nature (c. 298). The Code, nevertheless, gives juridical and public support to two specific forms of non-associated consecrated life, although their existence is subject to certain canonical requirements. They are the eremitic life and the order of virgins, recognized in cc. 603 and 604. The first form is identified with consecrated life because there is a public profession of the three evangelical counsels. The order of virgins is similar but it is not identified with consecrated life. The CCC puts special emphasis on these two forms of life (cf. nos. 920–924).

c) The specificity of that stable form of life is rooted in a new personal consecration, established by the profession of the evangelical counsels of chastity, poverty, and obedience, and the assumption of these obligations through vows or other sacred bonds similar to vows (*LG* 44), such as oaths or promises. All this entails a new and particular title by which the faithful are committed to follow Christ more closely, to live in total dedication to the glory of God, to the building up of the Church and to the salvation of the world. Those aims of following Christ, of total dedication to God and to the service of the Church and the world, are aims and duties common to all the faithful, as we said above; therefore the specifics of consecrated life are not rooted there, but in the particular title by which they are assumed, according to the special vocation received from God.

d) The other particular feature, and one that is truly distinctive of consecrated life both religious and secular, is the eschatological function that is called on to be performed in conjunction with the ecclesial missions. The public testimony of the eschatological character of the Church is thus established in the reason for being, in the most genuine ecclesiological foundation of this form of living holiness in the Church. The Council pointed out that it predominantly fell to religious to show to all the faithful that celestial goods are already here in this world, to testify to the new and eternal life won through the redemption of Christ, and to prefigure the future resurrection and the glory of the heavenly kingdom. Those who are thus consecrated, states c. 573 § 1, are changed into an eminent sign in the Church whose mission is to announce the celestial glory. Because of its exceptional character, religious testimony does not constitute the only form of Christian existence. It is a model for all the eschatological Christian aspects, since the ordinary Christian existence exemplifies the hidden life of the Lord as well.

6. This last defining characteristic of consecrated life is perhaps the one that created the most problems for theological science from the moment it became equally applicable to religious life and to consecrated secular life. The *separatio a mundo* (the withdrawal from temporal affairs) was always considered as an essential element of consecration and the maximum expression of the eschatological dimension that the religious state encompassed. In the new broad concept of consecration the eschatological function continues being essential, and the consecrated are

called to discharge it. But secular consecrated do not discharge this function by separating themselves from the world, but *in saeculo ac veluti ex saeculo*, through the management of temporal affairs. The basis of the doctrinal debate that took place right from the official beginning of the secular institutes is rooted precisely in finding out if the concepts of secularity and consecration are compatible. For one doctrinal sector, making them compatible was the great novelty of the *Constitution Provida Mater Ecclesia*. But another doctrinal sector had difficulty in clearly seeing this compatibility, perhaps because they identified consecration with separation or renunciation of the temporal. It is no wonder, then, that Bandera, for example, considered the notion of consecrated life, as it had already been proposed in c. 573, to carry a kind of congenital ambiguity.[1]

1. Cf. A. BANDERA, "Eclesiología de la vida religiosa ¿Hacia un retroceso?" in *Angelicum* 66 (1989), pp. 577–602.

574 **§ 1. Status eorum, qui in huiusmodi institutis consilia evangelica profitentur, ad vitam et sanctitatem Ecclesiae pertinet, et ideo ab omnibus in Ecclesia fovendus et promovendus est.**

§ 2. Ad hunc statum quidam christifideles specialiter a Deo vocantur, ut in vita Ecclesiae peculiari dono fruantur et, secundum finem et spiritum instituti, eiusdem missioni salvificae prosint.

§ 1. The state of persons who profess the evangelical counsels in these institutes belongs to the life and holiness of the Church. It is therefore to be fostered and promoted by everyone in the Church.

§ 2. Some of Christ's faithful are specially called by God to this state, so that they may benefit from a special gift in the life of the Church and contribute to its saving mission according to the purpose and spirit of each institute.

SOURCES: § 1: c. 487; *LG* 44; *MR* 8; *MG*: 566
§ 2: *LG* 43; *PC* 2

575 **Consilia evangelica in Christi Magistri doctrina et exemplis fundata, donum sunt divinum, quod Ecclesia a Domino accepit Eiusque gratia semper conservat.**

The evangelical counsels, based on the teaching and example of Christ the Master, are a divine gift which the Church received from the Lord and which by His grace it preserves always.

SOURCES: *LG* 43; *PC* 1

576 **Competentis Ecclesiae auctoritatis est consilia evangelica interpretari, eorundem praxim legibus moderari atque stabiles inde vivendi formas canonica approbatione constituere itemque, pro parte sua, curare ut instituta secundum spiritum fundatorum et sanas traditiones crescant et floreant.**

It is the prerogative of the competent authority in the Church to interpret the evangelical counsels, to legislate for their practice and, by canonical approval, to constitute the stable forms of living which arise from them. The same authority has the responsibility to do what is in its power to ensure that institutes grow and flourish according to the spirit of their founders and to their sound traditions.

SOURCES: *LG* 43–45

CROSS REFERENCES: cc. 207 § 2, 208, 573

COMMENTARY

T. Rincón-Pérez

1. The evangelical counsels constitute the principal axis around which consecrated life revolves. It is in the profession of those counsels through vows or other sacred bonds that itsessence really lies; that is, it denotes the specific nature of that stable form of Christian life. It is no wonder then that the legislator, once having described the theological-canonical features that characterize consecrated life, immediately turns to synthesize in those canons some of the conciliar principles regarding the divine origin of the evangelical counsels as well as their ecclesiological reach and relevance, which accrues from the moment that their practice becomes established in stable forms of life. Since this question involves those three canons, we will comment on them together.

2. As c. 207 § 2 had done, and as well as c. 573 § 1 implicitly had done, by denominating consecrated life a *stable form* of living, c. 574 reiterates the idea of *state* (canonical) to refer to the group of faithful who profess the evangelical counsels in the institutes of consecrated life, whether religious or secular. Once the Council and the Code (c. 208) had proclaimed the principle of fundamental equality of all the faithful, the differences in the Church were not situated according to personality, but according to their ecclesial function. Therefore, it is not appropriate to speak of a state that classifies according social strata, that is, a template that stratifies groups according to a class of persons (in this case, the consecrated) as holders of a juridical patrimony different from that held by the rest of the faithful, but rather it is more appropriate to speak of the subjective juridical condition founded in consecration and in the particular ecclesial function that this consecration entails.

The relativization of the notion of the state of consecrated—or consecrated state, similar to the religious state—is also suggested by the fact of its referring to both religious and secular consecrated. No doubt this broad meaning of the concept of consecrated state adds a new difficulty

to understanding this state as constitutively essential to the people of God. One doctrinal sector sometimes understands it this way: as a fundamental state, that is, as a basic pillar, next to laity and the priesthood, upon which is built the Church. But if it is already hard see the matter this way for lack of convincing arguments, when we turn to the *religious* state in the strict sense it is even more difficult to understand that essence of the consecrated state when it also consists of the consecrated seculars. In effect, according to one doctrinal sector, only those who embrace and practice the evangelical counsels in the totality of their content, that is, those who renounce the management of temporal affairs (in other words, religious), would be truly established in a constitutive order of the people of God.[1] But this argument lost strength from the moment the Code included among the members of the consecrated state those who, according to this theory, do not practice the evangelical counsels in the totality of their content: that is, by not renouncing the management of temporal affairs.

3. Thus understood, consecration establishes a particular condition of life in the Church, governed by a juridical statute determined by the universal and the proper law. This common condition of life is later diversified into several ways of being consecrated; and this is how the condition of religious life and the condition of secular life arise. No one would see any contradiction in this as long as one starts from the premise of a new concept of canonical *state*, inspired by conciliar principles, assumed by the Code, of fundamental equality and functional diversity.

4. This last concept presents another question that also deserves to be emphasized in the commentary on these canons. It involves seeing *a*) the relationship between the evangelical counsels and Christian life; and *b*) the relationship between the evangelical counsels of poverty, chastity, and obedience and the essence of consecrated life.

a) During the time in which the thesis of the states of perfection (or rather, the religious state as a state of perfection) was in force, it was common to make a distinction between precepts and counsels, assigning to the lay faithful a simple fulfillment of the first, while the practice of the second remained reserved to those who were professed in a state of perfection. The evangelical counsels thus were established in the exclusive and essential constitution of the religious state, encoding Christian perfection into them. Their true practice constituted a state of life distinct from laity and the priesthood. If in fact the councils were lived outside the religious state, it would have involved a certain assimilation into religious life.[2]

1. Cf. A. BANDERA, "Eclesiología de la vida religiosa. ¿Hacia un retroceso?," in *Angelicum* 66 (1989), pp. 577–602. Note that in the Latin version (*editio typica*) of the CCC, the expression *religious state* at the beginning of the no. 916 has been replaced with *state of consecrated life*.
2. Cf. J. DANIELOU, "Puesto de los religiosos en la estructura de la Iglesia," in *La Iglesia del Vaticano II*, vol. II (Barcelona 1966), pp. 1123–1130.

The Council, however, not only deliberately suppressed the concept of the state of perfection considered as a characteristic feature of religious life, but it also distanced itself from the classic distinction of "precepts-counsels" in reference to Christian perfection, placing instead its essence in the perfection of charity.[3]

This has been thus summarized in no. 915 of the CCC: "Christ proposes the evangelical counsels, in their great variety, to every disciple. The perfection of charity, to which all the faithful are called, entails for those who freely follow the call to consecrated life the obligation of practicing chastity in celibacy for the sake of the Kingdom, poverty and obedience. It is the *profession* of these counsels, within a permanent state of life recognized by the Church, that characterizes the life consecrated to God" (cf. *LG* 42–43; *PC* 1).

Further on, in no. 1974, the CCC shows in a general way that "perfection of the new law consists essentially in the precepts of love of God and of one's neighbor. The counsels indicate the most direct routes, the most appropriate means, and they must be practiced according to each person's vocation."

b) In light of all this, the doctrinal scope of cc. 574 and 575 is better understood. The state of consecrated life is made up of those who profess the evangelical counsels of obedience, chastity, and poverty. It is proper to say, therefore, that while the evangelical counsels do not exclusively constitute the consecrated state, the essence of that state is the profession of those counsels in an institute canonically erected by the competent authority of the Church; and through the vows or other sacred bonds, whether it is a profession in a religious or in a secular institute. In that consecration lies, therefore, the specific and proper manner of living evangelical radicalism, as well as the evangelical counsels, by those faithful who are especially called by God to the consecrated state.[4]

5. Finally, the consecrated state, according to the teaching of the Council (*LG* 43 and 44), and reproduced in this canon in harmony with c. 297 § 2, without belonging to the hierarchical structure of the Church (for it is not an intermediate step between the clerical condition and the lay condition, required by the divine constitution and hierarchy of the Church) belongs, nevertheless, to the life and holiness of the Church, inasmuch as it is a stable form of living the evangelical counsels. If this consecrated state were to be identified with the evangelical counsels, it would be proper to conclude that it is indisputable, belonging to the life and holi-

3. B. ROLLIN, "Le radicalisme des conseils évangéliques," in *Nouvelle Revue Théologique* 108 (1986), pp. 532–554.

4. Cf. T. RINCÓN-PÉREZ, "Sobre algunas cuestiones canónicas a la luz de la Ap. Exhort. 'Pastores dabo vobis'," in *Ius Canonicum* XXXIII (1993), pp. 315–378. Secular priests are called, as are all the faithful, to a radical commitment and to its privileged expression, that of the various evangelical counsels, but secular priests must live the evangelical counsels according to the form of their priestly status.

ness of the Church would be equivalent to saying that it belongs to the essence of the Church since it has the same divine origin as do the evangelical counsels, which constitute and establish it.

It is beyond all doubt that the evangelical counsels, according to the council's words repeated in c. 575, "based on the teaching and example of Christ the Master, are a divine gift which the Church received from the Lord and which by His grace it preserves always." But what characterizes consecrated life, what identifies it as such, is not the evangelical counsels in themselves, but rather the consecrated form of living them; or, as stated in no. 915 of the CCC, the profession of those counsels in a state of stable life recognized by the Church. Therefore, even being certain that those counsels are a divine gift whose beginning is simultaneous with that of the Church itself, it is not so sure, as it is affirmed by one doctrinal sector, that the particular form of living them has the same divine beginning and is therefore constituted as an essential and constitutive part of the Church. This is true because it has been "in docile response to the promptings of the Holy Spirit [that] the hierarchy accepts rules of religious life which are presented for its approval by outstanding men and women, improves them further and then officially authorizes them" (*LG* 45: immediate source of c. 576). These stable forms, set up historically by the Church, are the so-called institutes of consecrated life. Those who profess the counsels in these institutes are those who make up the state of consecrated life.

6. In any case, what is not arguable is that the consecrated state belongs to the life and holiness of the Church, for which reason c. 574 orders its promotion and encouragement by all the faithful, although only some of them might come to have the special divine vocation which that particular and stable form of life requires. It is a matter of a positive duty of encouragement that includes, obviously, the prohibition of any act that diminishes the dignity of that state. Generally, at least since it is a positive duty, it has a moral scope, but it can also have a juridical scope in the case of the consecrated themselves.

577 **Permulta in Ecclesia sunt instituta vitae consecratae, quae donationes habent differentes secundum gratiam quae data est eis: Christum, enim, pressius sequuntur sive orantem, sive Regnum Dei annuntiantem, sive hominibus benefacientem, sive cum eis in saeculo conversantem, semper autem voluntatem Patris facientem.**

In the Church there are very many institutes of consecrated life, with gifts that differ according to the grace which has been given them: they more closely follow Christ praying, or Christ proclaiming the Kingdom of God, or Christ doing good to people, or Christ in dialogue with the people of this world, but always Christ doing the will of the Father.

SOURCES: c. 488,1°–4°,7°; *PME* I; *LG* 36, 46; *PC* 8a, 11

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

1. The immediate source of this canon is a text of *Lumen gentium* 46, although, because of the generic character of the title in which it is found (covering all consecrated life, including secular consecrated life), the legislator adds to the three kinds of religious life pointed out by the Council one more pertaining to the secular institutes. In effect, the conciliar text teaches how the Church, by means of religious, shows Christ better to the world "in contemplation on the mountain, in His proclamation of the kingdom of God to the multitudes, in His healing of the sick and maimed, in His work of converting sinners to a better life ..." The canon makes use of the substance of that text to illuminate a complete typological description of consecrated life as it is understood in broad terms in the Code. Thus it distinguishes these four kinds of institutes: the institutes that in and of themselves are *contemplative*, that is, those in which Christ is more closely followed when praying; the *apostolic* institutes, those which follow Christ when proclaiming the Kingdom of God; those dedicated to works of *charity*, that is, those which follow Christ when doing good to others; and finally, the *secular institutes* that follow Christ when in dialogue with men in the world, while always doing the will of the Father.

2. On making this general typology of consecrated life, the present Code does not take into consideration other criteria that were formerly in force: for example, the criterion of solemnity in vows and the consequent

distinction between religious orders and congregations (cf. 488, 2° *CIC* 1917).

Because solemnity in vows was essential, for centuries all religious forms of life were configured as *orders*. With the promulgation in 1900 of the Constitution *Conditae a Christo*, religious congregations were established, thus displacing *solemnity* by *publicity* in vows as the essence of religious life. Orders and congregations are equally religions; nevertheless, the *CIC*/1917 still maintained a juridical regime differentiated according to the distinct nature of the vows taken. In any case, aside from those generic forms of religious life, the old Code never contemplated systematically the variety of the kinds of religious life that had been historically evolving: for example, contemplative monastic life or the life of the canons regular, or the convent life of the mendicant orders, open to the external apostolate, or the varied forms of apostolic life that could characterize regular clerics and the modern religious congregations.

3. Aside from the already-cited text of *Lumen gentium*, the source of the canon that we are commenting on, *Perfectae caritatis* distinguishes also between purely contemplative institutes and those dedicated to apostolic life, while making a special invitation for the preservation and revitalization of the venerable institution of monastic life, which throughout the centuries has performed extraordinary work in the Church and human society (cf. no. 9). The Decree also refers to lay religious life (n. 10) and the secular institutes as a nonreligious consecrated form (n. 11).

The Code of the Eastern Churches, in accord with its monastic tradition, after some general norms applicable to monks and the other religious, regulates first and foremost and in special detail monastic life, and concerns itself afterward with orders and congregations. It deals with the secular institutes of common life *ad instar religiosorum* in distinct chapters.

In the first effort to revise the Code of the Latin Church, a typology as close as possible to the great historic kinds of life was sought to be imparted to the universal law. Thus, in the *schema* of 1977 sent to the various consulting bodies, within the title regarding religious institutes the monastic institutes were contemplated on the one hand, and on the other hand, those institutes dedicated to the works of apostolate, among which were the canonical, conventual, and apostolic institutes.

In the end, that attempt at classification was abandoned: first, because of the natural difficulties that universal legislation encounters when trying to cover the infinitely varied ways that foundational charisms are institutionalized; but moreover, because it did not consider adequately the criterion used as a starting point(the apostolate), keeping in mind that the apostolic dimension is an inherent characteristic of all religious life as well as of contemplative life, since it applies to every Christian life.

The non-adoption of that criterion of distinction was the reason that inspired in good measure the chapter about the apostolate of religious which was new to the *CIC*/1917. In the *CIC*/1917, one departs from the cited principle according to which all religious life is apostolic life by definition and where the various ways of carrying out that apostolic mission are specified, keeping in mind the nature of each institute: *a*) through the contemplative life, whose apostolic fecundity, based on the intimate union with God, is superior to any urgency of a pastoral or active apostolate nature; *b*) through the active and public apostolic life carried out in the name and by the mandate of the Church; and *c*) through the practice of works of mercy, both spiritual and corporal (cf. 673–676). As one can see, the kinds of institutes pointed out in c. 577 are reproduced here, but with the logical exception of the secular institutes, since it deals solely with religious life.

In addition to what we have just noted in regard to apostolic life, the deliberate renunciation of a systematic regulation of the various kinds of institutes does not prevent the Code from occasionally taking into account certain particularities that are derived from the distinct nature of the institutes. For example, the Code does not make a systematic regulation, as does the Eastern Code, of monastic life, but refers on occasion to *monks* and *nuns*, and to canons regular (cf. 613–615), and to the abbot primate and to the superior of a monastic congregation (cf. 620).

4. In light of the broad concept of consecrated life handled by the Code, there is nothing unusual about the present canon's describing generically four kinds of institutes, including the secular institutes. If moreover it is understood that life consecrated by the evangelical counsels constitutes not *the* radical following of Christ, but rather *a* radical following, neither is it strange that the criterion employed to distinguish the various kinds of institutes is the way of following Christ in their various facets or dedications. Nevertheless, some authors become confused by the fact that this canon, referring to the secular institutes, includes this clause that marks the following of Christ "cum hominibus in saeculo conversantem." For A. Bandera,[1] for example, this addition to the Code entails a grave Christological problem that later becomes an ecclesiological problem. According to him, it is because Jesus was not concerned with the management of temporal affairs and, therefore, He did not embody the secular vocation in its specific content, nor can He be presented as an example of the vocation of lay faithful. Dedication to temporal affairs cannot be, therefore, a road for following Him more closely. On the other hand, the same author asserts, the evangelical counsels require from within and by themselves the renunciation of the management of temporal affairs; therefore, only religious assume the counsels in the totality of their content.

1. Cf. A. BANDERA, "Eclesiolgía de la vida religiosa ¿Hacia un retroceso?," in *Angelicum* 66 (1989), p. 588.

From these debatable theses, it is no wonder that not only the part of the canon that we are commenting on, but also the whole body of canonical regulation of institutes of consecrated life was incomprehensible to him. From his perspective, it would be even less comprehensible that even the non-consecrated faithful, whether priests or lay, could fully assume the content of the evangelical counsels even if professed *modo religioso*; or that they could radically follow Christ, taking him not only as Master, but also as a model of their Christian existence.

What characterizes consecrated life is the *profession* of the evangelical counsels in a stable state of life. The counsels as such are proposed "in their great variety, to every disciple" of Christ (CCC, 915); and therefore evangelical radicalism is a fundamental requirement of all Christians, without exception, regardless of their condition of life, a condition that cannot be renounced (cf. *PDV* 27).

Consecrated life constitutes a specific manner of following Christ that translates into a particular condition of life. The secular institutes belong to it since they embrace the evangelical counsels with a sacred bond. There is nothing more logical, therefore, than for them to be in c. 577, forming a part of a generic typological distinction of the institutes of consecrated life.

578 **Fundatorum mens atque proposita a competenti auctoritate ecclesiastica sancita circa naturam, finem, spiritum et indolem instituti, necnon eius sanae traditiones, quae omnia patrimonium eiusdem instituti constituunt, ab omnibus fideliter servanda sunt.**

The mind of the founders and their dispositions concerning the nature, purpose, spirit and character of the institute which have been approved by the competent ecclesiastical authority, together with its sound traditions, all of which comprise the patrimony of the institute itself, are to be faithfully observed by all.

SOURCES: *LG* 45; *PC* 2b; *ES* II: 16 § 3

CROSS REFERENCES: cc. 586, 587 § 1, 631 § 1, 619

COMMENTARY

Tomás Rincón-Pérez

Faithfulness to the patrimony of each institute

The constant return to the originating sources, to the original inspiration of the institutes, together with their prudent adaptation to the circumstances of today's world, wisely evaluated in the light of faith, are the two great conciliar principles around which must revolve a fitting renovation of consecrated life. It is a matter of, on one hand, avoiding resistance to change: just as the Church itself must do, the institutes of consecrated life must renew themselves within the context of history. But moreover it is a matter of avoiding such a radical transformation that takes the institute away from its originating source, from the foundational charism.

Canon 578 echoes one of those principles on reproducing almost literally this conciliar text: "It is for the good of the Church that institutes have their own proper characters and functions. Therefore the spirit and aims of each founder should be faithfully accepted and retained, as indeed should each institute's sound traditions, for all of these constitute the patrimony of an institute" (*PC* 2 b). An institute's own patrimony, therefore, has its origin in the mind and dispositions of the founder, that is, in the foundational charism, in whose light must be interpreted the elements that constitute the institute: nature, end, spirit, and nature or character of each institute, together with the legitimate traditions that have become incorporated throughout history.

To avoid the risk of comparing consecrated life originating through the public profession of the evangelical counsels with consecrated life coming from the mere reception of baptism, nowadays it is of great importance to identify the differentiating profiles between one and another condition of life. Canon 573 concerns itself with that task in respect to consecrated life in general; and cc. 607 and 710 deal with what is referred to as religious life and consecrated secular life.

But along side this generic identity, it is no less important that each institute conserve its own identity as already described in the foundational charism—the originating source—without forgetting the legitimate traditions, that is, the historical contributions that have been wisely incorporated into the patrimony of each institute.

Upon this basis, c. 578 imposes on all the members of an institute the obligation of observing with fidelity that which is proper and characteristic of the institute, that which constitutes its reason for being when it was established and approved by ecclesiastical authority. In the end, fidelity of a consecrated person to his or her own vocation is not an abstract fidelity because the vocation is not abstract, but rather it must necessarily be specified by the faithful observance of the ends and spirit that characterize the institute.

It is advisable to note that the calling to fidelity that c. 578 makes is not a mere ascetic recommendation, but one that contains a great imperative duty, *ab omnibus fideliter servanda sunt,* of a moral nature in every case, but with indisputable juridical consequences. Thus, for example, when c. 696 establishes the causes for a possible expulsion, it does so, obviously, in generic terms, but some of them are based on the breach of the obligations proper to each institute.

But the defense of the patrimony of each institute, constituted by the foundational purpose and spirit, as well as by the legitimate traditions, actually, the care of its own identity, is not a task uniquely entrusted to the fidelity of each and every member. Given its importance, it is a responsibility that affects especially those who exercise authority in the institute. It is the prerogative of the superiors to be an example to the rest "in observing the laws and traditions proper to the institute" (c. 619). One of the tasks entrusted to the general chapter is precisely the defense of the patrimony of the institute (c. 631 § 1). Everything ordered to be observed in the canon that we are commenting on must be contained necessarily in the fundamental codes or constitutions, pursuant to c. 587 § 1. Lastly, the just autonomy that c. 586 recognizes in each institute has as its principal end the ability to preserve the integrity of the proper patrimony dealt with in c. 578.[1]

1. J. OCHOA, "Modus determinandi patrimonium constitutionale cuiusvis Instituti perfectionis proprium," in *Commentarium Pro Religiosis* 48 (1967), pp. 337–350; 49 (1968), pp. 97–111.

579 **Episcopi dioecesani, in suo quisque territorio, instituta vitae consecratae formali decreto erigere possunt, dummodo Sedes Apostolica consulta fuerit.**

Provided the Apostolic See has been consulted, diocesan bishops can, by formal decree, establish institutes of consecrated life in their own territories.

SOURCES: cc. 488, 3°, 492 § 1; SCR Normae, 6 mar. 1921, 3 (*AAS* 13 [1921] 313); SCR Decr. *Quod iam*, 30 nov. 1922 (*AAS* 14 [1922] 644–646); SCEP *Normae*, 10 iun. 1967

CROSS REFERENCES: c. 589

COMMENTARY

Tomás Rincón-Pérez

Canonical erection of an institute of consecrated life

1. Consecrated life, as c. 573 defines it, is that which is lived in an institute canonically erected by the competent authority of the Church. Canonical erection, therefore, is a necessary requirement for an association that has the characteristics proper to consecrated life to acquire its condition as such in the Church. Canon 579 determines who is the competent authority and what is the procedure to follow in the canonical erection of an institute.

On one hand, competence nominally falls on the diocesan bishop for which reason the other local ordinaries are excluded (cf. c. 134). But for the first canonical erection, the Apostolic See obviously is competent (c. 589) also. In the case of canonical erection realized by the diocesan bishop, the institute will have the nature of an institute of diocesan right until the Holy See issues the *Decretum laudis*. If, on the other hand, the first erection is decreed by the Apostolic See, it will be from the beginning an institute of pontifical right.

2. Regarding procedure, the canon only establishes that the erection is accomplished through a formal decree, that is, by an administrative act that fulfills all the formal requirements (pertinent for that type of act) such as, among others, that it be done in writing (c. 51). It is important to note in this regard that through that administrative act, the bishop (or the Apostolic See, as the case may be), must confer juridical status on the institute, but by doing so he does not become its founder. In this sense c. 579

is more technically precise than c. 492 of the *CIC*/1917, which talked about the competence of the bishop to *found* religious congregations. This obligated the commentators to distinguish between *material* and *formal* foundation. The new law does not distinguish between orders and congregations; it limits itself to dealing with the formal erection of the institutes of consecrated life, encompassing the religious institutes and the secular institutes. This implies a two-step process because when discussing the old c. 492 which granted competence to the diocesan bishop only to *found* religious congregations, it was taken for granted that the approval of a religious order was a matter reserved to the Apostolic See. It should be noted in this regard that if the Code did not mention this approval explicitly, it was due to the fact that no new orders have been erected since the 18th century (the last was approved in 1752); and, given the circumstances, neither did it seem likely that any will be erected in the future.[1]

3. The competence attributed to the diocesan bishop to canonically erect an institute of consecrated life is conditioned in c. 579 on the requirement of a prior consultation with the Apostolic See. On this point the criterion of the prior legislation is followed as well as the recommendation of Vatican Council II, according to which "when it is proposed to found new religious institutes the question must be seriously pondered, whether they are necessary, or even very useful, and whether it will be possible for them to increase. Otherwise, institutes may be imprudently brought into being which are useless or lacking in sufficient resources" (*PC* 19). To warn against those risks, no one is in better position than the Apostolic See. Perhaps that is why, without forgetting other reasons, the criterion of the first *schemata* of revision, specifically that of the *schema* of 1977, when sent to the consulting bodies, was not successful. According to that *schema*, the prior consultation would have to have been with the Conferences of Bishops without whose consent the bishop could not have acted. In the mentioned *schema*, it was noted as well that before giving its consent, the Conferences of Bishops should take care that institutes of a similar nature, end, and mission do not multiply within the same territory.

4. With respect to the juridical effect of canonical erection without prior consultation with the Holy See, the former doctrine affirmed its validity, without lessening it by calling it a voidable act.[2] It was affirmed, moreover, that the consultation required by c. 492 of the *CIC*/1917 rather meant a true petition for permission that the SCR had to grant for the bishop to proceed legally, permission that normally took the negative form of the *nihil obstat*.[3]

1. Cf. A. LARRAONA, "Commentarium Codicis," in *Commentarium pro religiosis* 5 (1924), p. 44; Cf. A. TABERA, *Derecho de religiosos*, 3rd ed. (Madrid 1957), p. 41,
2. Cf. A. TABERA, *Derecho de religiosos*, cit., p. 43.
3. Cf. A. LARRAONA, "Commentarium in legem peculiarem institutorum saecularium," in *Commentarium pro Religiosis* 30 (1949), p. 227.

The tenor of the current norm ("dummodo Sedes Apostolica consulta fuerit") seems to be inclined more toward nullity *a iure* than voidability in questions of the consultation requirement. Nevertheless, the norm does not mention the requirement of prior permission and thus, in principle, once the consultation is effected, the bishop could act validly and legally, even without following the criterion of the Holy See. This interpretation seems to us to be most congruent with the literal text of the present canon. If the legislator had wanted to require prior permission, there would have been no technical difficulty in having so stated. Therefore, in the hypothetical case where the curial practice requires permission, one would have to conclude that either it is an illegal requirement or at least that c. 579 is technically incorrect. Moreover, it should not be forgotten that an institute erected by the bishop is one of diocesan right. Thus, the possible canonical defects that it could have had upon its first being canonically recognized can either be corrected when the *Decretum laudis* is requested, or simply the Decree will not be granted by the Apostolic See,[4] because the defect is not correctable. In this way hypothetical problems with a bishop's canonical erection of an institute of consecrated life will disappear, without adjusting from the beginning to the criteria issued by the Holy See.

4. Cf. Decr. *Quod iam*, November 30, 1922, in *AAS*, 14 (1922), p. 644.

580 **Aggregatio alicuius instituti vitae consecratae ad aliud reservatur competenti auctoritati instituti aggregantis, salva semper canonica autonomia instituti aggregati.**

The aggregation of one institute of consecrated life to another is reserved to the competent authority of the aggregating institute, always safeguarding the canonical autonomy of the other institute.

SOURCES: c. 492 § 1; *ES* II: 39–41

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

In the former legislation the concept of *aggregation* encompassed only the "third orders" (cf. 492 *CIC*/1917). Given the generic tenor of c. 580, the aggregation to which it refers today could encompass other cases. In any case, keep in mind that aggregation only produces spiritual effects, that is, it only signifies communion of spirit and spiritual graces, without diminishing the juridical autonomy of the aggregated institute.[1] This is the basis for the difference between aggregation and the fusions and unions that c. 582 contemplates. To this end, *Ecclesiae Sanctae* II, 41, had already anticipated that "if a suppression is finally decided upon, provision must be made that 'if possible (the institute) be aggregated with a more flourishing (institute) whose aim and spirit differ little from its own' (*Perfectae Caritatis*, 21)." Although *Ecclesiae Sanctae* uses the term *aggregation*, it seems clear that it refers rather to a true union or fusion of institutes with all the juridical consequences that those acts imply.

Neither is it appropriate to identify the concept of *aggregation* with the concept of *association* found in c. 614. In this last case, it is a matter of a juridical act from which derive mutual rights and duties between the associating and associated institutes, which must be stated in the constitutions of the associated institute. On occasion, one effect of association could be that the superior of a masculine institute has true power over the associated monastery. The principal effect of aggregation, on the other hand, consists, as we have said, "in the transfer of all the graces, privileges, spiritual and communicable indulgences that the aggregating institute legitimately possesses, and in a certain protection and aid that are

1. Cf. *Comm.* 11 (1979), p. 45.

also spiritual."[2] The canonical autonomy of the aggregated institute, however, must always be maintained.

With respect to the authority to realize the act of aggregation, c. 580 reserves it to the competent authority of the aggregating institute. Later the proper law will establish the kind of competent superior. Some authors consider aggregation as one of the greatest matters whose treatment is the responsibility of the general chapter, pursuant to c. 631.[3]

2. D.J. ANDRÉS, *El Derecho de los religiosos (comentario al Código)*, 2nd ed. (Madrid 1984), p. 24.
3. D.J. ANDRÉS, *ibid.*, p. 168.

581 **Dividere institutum in partes, quocumque nomine veniant, novas erigere, erectas coniungere vel aliter circumscribere ad competentem instituti auctoritatem pertinet, ad normam constitutionum.**

It is for the competent authority of the institute to divide the institute into parts, by whatever name these maybe called, to establish new parts, or to unite or otherwise modify those in existence, in accordance with the constitutions.

SOURCES: cc. 494, 1500; *AIE* 1°

CROSS REFERENCES: cc. 585, 621

COMMENTARY

Tomás Rincón-Pérez

Division of the institute into circumscriptions

This is a norm common to all the institutes of consecrated life and therefore applicable to religious institutes and secular institutes. This is the reason for which the canon generically talks about *division into parts* (*circumscriptions*), and not about *provinces*, which is the proper name of the circumscriptions into which a religious institute is divided (c. 621).

In the former legislation (cf. c. 494 § 2 *CIC*/1917), all the material relative to division, modification, and suppression of provinces was considered among the most important matters to be reserved exclusively to the Apostolic See.

The first disciplinary change, that is, the first decentralization, was brought about through the Decree *Ad instituenda*, of June 4, 1970.[1] From then on only the obligation to resort to the Holy See to realize the first division in provinces and the total suppression of the same remained in force. But it was the responsibility of the institutes themselves, in conformity with their proper law, to unite with other provinces that were already established, or to establish other limits for them, create other provinces, or suppress those that already were in existence.

Canon 581, together with c. 585, confers powers on the authority of the institute to carry out all the procedures relative to the division and

1. *AAS* 62 (1970), p. 449.

suppression of circumscriptions. A total decentralization of the entire subject, therefore, is produced, with the exception that the norms of the proper law that establish those powers must be constitutional norms, that is, they must be included in the constitutions or fundamental code, and as such, they must be approved by the competent authority of the Church, or modified with its consent (c. 587 § 2).

582 **Fusiones et uniones institutorum vitae consecratae uni Sedi Apostolicae reservantur; eidem quoque reservantur confoederationes et foederationes.**

Fusions and unions of institutes of consecrated life are reserved to the Apostolic See alone. To it are likewise reserved confederations or federations.

SOURCES: Pius PP. XII, Hom. *Exsultent hodie*, 18 sep. 1947 (*AAS* 39 [1947] 454–455); SpC VII; *PC* 21, 22; *ES* II: 39–41

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

Acts of union, fusion, federation, and confederation

The preceding canons have addressed the competent authority for the formal erection of an institute as well as with their internal division. The present canon, on the other hand, contemplates a series of juridical activities through which two or more institutes combine in a more or less intense manner, according to the nature of that activity. The canon refers specifically to these four juridical phenomena: union, fusion, federation, and confederation. These kinds of acts have great importance, both for the institutes themselves and for each of the members who see their original juridical situation modified, sometimes substantially so. It is no wonder, then, that those diverse activities are reserved exclusively to the Apostolic See, even when it involves institutes of diocesan right.

1. *Historical sketch*

To better understand the scope of those distinct juridical phenomena, it will be helpful first to give a brief historical introduction. The first point to be made is that none of the concepts referred to now in c. 582 explicitly appeared in *CIC*/1917. This does not mean that the phenomena described here were nonexistent or unknown. The old Code only referred explicitly to the so-called monastic congregation (c. 488,2° *CIC*/1917), conceiving of such as the union or combination of several independent or *sui iuris* monasteries under the same superior. It was a matter of a true

religion, with its own moral personality, whose difference with other religions lay in that the members of the former religious entity were not physical persons but other moral persons, that is, the independent congregated monasteries. Theoretically nothing prevented the formation of monastic congregation of women, but the concept was only in fact applicable to orders of men.

On the other hand, the doctrine at that time did not identify *monastic congregation* (that of c. 488,2° *CIC*/1917) with *federation*, although there might have been many points of similarity between them. In effect, a federation was understood as the union of several monasteries or houses *sui iuris*, independent in themselves, established with the approval of the Holy See, and with their autonomy preserved intact. But a federation did not constitute a "religion" properly speaking, as did the monastic congregation, despite the existence of a juridical bond through which a federation was constituted in a superior moral person, distinct from that of each individual monastery.[1]

With respect to a *confederation*, *CIC*/1917 did not mention the term explicitly, either, though it did implicitly refer to it every time it contemplated the figure of the abbot primate, whose authority governed a confederation (the union of several monastic federations or congregations).

In view of this, the doctrine came to distinguish between religious orders of a centralized governance and those of a federative form of governance. In the first case, a Supreme moderator, a provincial superior, and a local superior governed the orders. In the second case, each monastery was *sui iuris*, governed by its own abbot, but many were joined in monastic congregation and thus also had an abbot superior. They could even have an abbot primate as a superior if such congregations or federations were joined in confederation.

As we stated above, the federative system was more proper to the masculine orders. It would be Pope Pius XII who would later cause the establishment of a federation of monasteries of nuns. In 1947, in celebration of the fourteen hundredth anniversary of the death of St. Benedict, the Pope recommended that several Benedictine families combine in federation.[2] That same recommendation was afterward extended to the monasteries of nuns with the regulation of the establishment of federation in the Constitution *Sponsa Christi* of November 21, 1950[3] developed by the Instruction *Inter praeclara* of the SCR, of November 23, 1950.[4]

1. Cf. A. TABERA, *Derecho de religiosos*, 3rd ed., (Madrid 1957), p. 11; A. LARRAONA, "Commentarium ad CIC, ad c. 488," in *Commentarium pro Religiosis* 2 (1921), p. 277; G. ESCUDERO, *El nuevo derecho de religiosos*, 2nd ed. (Madrid 1975), p. 36, note 5.
2. *AAS*, 39 (1947), pp. 454–455.
3. *AAS*, 43 (1951), pp. 13, 18.
4. *AAS*, 43 (1951), pp. 42–43.

Vatican Council II, besides also urging the promotion of a new federation of autonomous monasteries, favored another kind of union and association. Thus, *Perfectae caritatis* 21 provides that when certain institutes and monasteries do not offer, in the judgment of the Holy See, hope of further development, they "are to be forbidden to receive any more novices. If possible, they are to be amalgamated with more flourishing institutes or monasteries whose aims and spirit differ little from their own." Note 22 adds: "Institutes and independent monasteries should, as opportunity offers and with the approval of the Holy See, form federations, if they belong in some measure, to the same religious family. Failing this, they should form unions, if they have almost identical constitutions and customs, have the same spirit, and especially if they are few in numbers. Or they should form associations if they have the same or similar active apostolates."

In executing the above-mentioned norms of *Perfectae caritatis*, *Ecclesiae Sanctae* made clear a series of principles that the doctrine would not overlook when it came time to appraise the canonical effects of the union or fusion of institutes. "In all those cases, [in effect established by *ES* II, 40–41], one must keep in view the good of the Church, while being mindful also of the characteristics proper to each institute as well as the freedom of each religious member. Therefore, listen to each one of them beforehand and do everything with charity."[5]

2. *Different types of bonds between institutes*

All these normative precedents culminate in the current c. 582, in which four different kinds of combination are explicitly stated. The Code, however, does not give us their canonical scope and they must be extracted, therefore, from the practice of the Roman Curia, to whom they are reserved.

In light of that practice, the doctrine thus describes the distinct juridical phenomena:

Fusion exists when a small institute (A) joins a larger one (B) so that the first one (A) is suppressed by having been absorbed by the second (B), whose name, constitutions, and governance are assumed by the first (A). Sometimes fusion is called *extinctive union* because in truth institute A is extinguished by fusion.

5. Cf. A. GUTIÉRREZ, "Conditio juridica religiosorum non consentientium in unionem duarum congregationum," in *Commentarium pro Religiosis* 59 (1978), pp. 234–237. Regarding the Associations and Federations as organs of assistance and coordination between the monasteries, see Instr. *Verbi Sponsa*, of May 13, 1999, nos. 27–30.

Union, on the other hand, implies a suppression or disappearance of two or more institutes, leading to a new and different one. There are two kinds of union in this genre:

a) The *union* of two houses *sui iuris* that have the same founder and the same rule. This should not be confused with the so-called monastic congregation because the latter involves a union among various monasteries *sui iuris* under the same superior, with both monasteries remaining autonomous (*sui iuris*). In a true union of houses, they lose their autonomy.

b) The *union* of two or more institutes among themselves, forming a new religious house. Sometimes the united institutes have the same founder, but there can be unions between institutes that have different founders.[6]

With respect to the term *federation*, note that the canon does not explicitly mention the monastic congregation of the old Code, despite which (perhaps because of a recent and progressive historical decantation), the doctrine[7] identifies *federation* and monastic or canonical congregation, understanding them to be the combination of several monasteries or chapters of canons *sui iuris* under the same major superior. In any case, federation differs absolutely from union and fusion since in these last two there is a suppression of one or several institutes, while in the institutes that make up a federation, greater coordination and mutual assistance are sought without diminishing the canonical autonomy of each institute. This is principally the case among the smaller institutes, which already have either quite similar constitutions, the same spirit, or the same type of apostolate. A federation has statutes of its own approved by the Apostolic See. Pursuant to those statutes, a superior with the council presides over the federation but without any power over the institutes themselves.[8]

Finally, by *confederation*, is meant the combination under one abbot primate of several federations, or monastic or canonical congregations.

Extracted also from the practice of the Roman Curia is the procedure to follow until the Holy See issues the decree of fusion, union, or federation. In this respect, it is important to emphasize the necessary prior consultations that must be had with each religious member, who enjoys the freedom to join or to not join the newly created situation, especially when it is a union or fusion. In the stage that followed the promulgation of

6. Cf. M. DORTEL-CLAUDOT, "Quaestiones hodiernae de fussionibus, unionibus ac foederationibus IVC," in *Periodica* 79 (1990), pp. 663–683.

7. Cf. D.J. ANDRÉS, *El Derecho de los religiosos. Comentario al Código*, 2nd ed. (Madrid 1984), pp. 17 and 80.

8. Cf. M. DORTEL-CLAUDOT, "Quaestiones hodiernae…," cit., p. 675. Cf. Instr. *verbi Sponsa*, nos. 27–28.

Ecclesiae Sanctae, a religious who did not accept the union was granted a double option: request either a transfer to another institute or the indult of secularization. Such was the case, for example, in two decrees issued by the SCR on December 2, 1970 and May 29, 1971.[9] Presently, it seems that the only alternative, in principle, is a transfer to another institute, not the indult *in mundo redeundi.*[10]

9. Cf. A. GUTIÉRREZ, "Conditio iuridica religiosorum non consentientium in unionem duarum congregationum," in *Commentarium pro Religiosis* 59 (1978), pp. 234–237.
10. M. DORTEL-CLAUDOT, "Quaestiones hodiernae...," cit., p. 675.

583 **Immutationes in institutis vitae consecratae ea afficientes, quae a Sede Apostolica approbata fuerunt, absque eiusdem licentia fieri nequeunt**

Changes in institutes of consecrated life which affect elements previously approved by the Apostolic See, cannot be made without the permission of the same See.

SOURCES: c. 495 § 2

CROSS REFERENCES: cc. 578, 587 § 2, 595 § 1

COMMENTARY

Tomás Rincón-Pérez

Changes in institutes of consecrated life

The canon is a specific application of a general juridical principle pursuant to which a hierarchically inferior authority cannot change what has been established or approved by a superior authority, without obtaining the appropriate permission. The case that we are concerned with is where neither the bishops nor the chapters nor any other internal authority of an institute can introduce changes that affect what has been approved by the Apostolic See, without receiving the applicable permission.

In principle, the norm affects both the institutes of pontifical right and those of diocesan right. With respect to the former institutes, it must be kept in mind that the constitutions have been approved by the Apostolic See and can only be modified with its consent (c. 587 § 2). With respect to the latter institutes, it is the prerogative of the bishop to approve their constitutions and to confirm legally introduced amendments thereto, excepting, however, every case where the Apostolic See has taken the matter into its own hands (c. 595 § 1).

But the norm established in c. 583 goes beyond simple changes in laws by which the institute is governed. It aims, moreover, at changes that affect the patrimony of the institute already determined in c. 578 and approved by the Apostolic See. Generally, the configuration of an institute is reflected in its fundamental norms, but this does not prevent other configuring elements from existing that are not expressly set down in norms and whose possible modification also requires permission from the Apostolic See.[1]

1. Cf. E. GAMBARI, *I Religiosi nel codice (Commento ai singoli canoni)*, (Milan 1986), p. 47.

584 **Institutum supprimere ad unam Sedem Apostolicam spectat, cui etiam reservatur de eius bonis temporalibus statuere.**

Only the Apostolic See can suppress an institute and dispose of its temporal goods.

SOURCES: cc. 493, 1501; *PC* 21, 22; *ES* II: 39–41

CROSS REFERENCES: cc. 120, 123, 616 § 2

COMMENTARY

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Suppresion of an institute

The suppression of an institute is the exclusive prerogative of the Apostolic See. This same principle is extended to the juridical acts of union and fusion of institutes (c. 582; see commentary), keeping in mind that suppression is implied in one way or another in such acts. For the same reason, suppression of the only house of a religious institute is the exclusive competence of the Holy See (c. 616 § 2). This implies the suppression of the institute itself.

Note that the reservation to the Holy See is applied also to the institutes of diocesan right, despite their having been erected by the diocesan bishop and being under his care (c. 594). That very clearly shows that every institute, once formally erected, becomes patrimony of the universal Church, even before receiving papal approval.

Among the criteria that can help to form a judgment regarding the suppression of an institute, *Ecclesiae Sanctae* II, 41 provided the following: "The number of members remains small, even though the institute or monastery has been in existence for many years, candidates have not been forthcoming for a long time past and most members are advanced in years." The conciliar Decree *Perfectae caritatis* 21, also expressed the following criterion: "Institutes and monasteries, however, which the Holy See, having consulted the local ordinaries concerned, judges not to offer any reasonable hope of further development, are to be forbidden to receive any more novices. If possible, they are to be amalgamated with more flourishing institutes or monasteries whose aims and spirit differ little from their own."

To the extent that every institute is endowed with a public juridical personality, theoretically nothing prevents applying the norm of c. 120 to the case of extinction of the juridical person once its activity has ceased for a period of one hundred years. Anyway, as a public juridical person, its temporal goods are ecclesiastical goods. Just like suppression, the Apostolic See has exclusive power to dispose of the same (cf. c. 123).

585 Instituti partes supprimere ad auctoritatem competentem eiusdem instituti pertinet.

The competent authority of an institute can suppress parts of the same institute.

SOURCES: cc. 494, 1500, 1501; *AIE* 1°

CROSS REFERENCES: c. 581

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In the codification efforts (for example in the *schema* of 1977 sent for the general consultation), the competence to suppress a circumscription of an institute was expressly attributed to the general chapter of the institute. But finally in this respect the legislator followed the same criterion established in c. 581 for the division of institutes into parts or circumscriptions; that is, to attribute the competence to the authority of the institute while leaving it to the proper constitutional law to determine that authority.[1] Certainly, pursuant to c. 581, the competent authority for *division* must be determined expressly in the constitutions, while c. 585 does not include the clause *ad normam constitutionum.* But it appears logical that the proper constitutional law would also establish the competent authority for *suppression.*

It is important to note, finally (see commentary on c. 581), that the generic reference to parts or circumscriptions is due to the norm's application to both religious and secular institutes. In this sense, the name province (c. 621) would not be the most appropriate to designate the parts into which a secular institute can be divided. On the other hand, in the term "parts" there is not included houses whose erection and suppression is precisely regulated (cc. 609 and 616).

1. Cf. *Comm.* 11 (1979), pp. 5–51.

586 **§ 1. Singulis institutis iusta autonomia vitae, praesertim regiminis, agnoscitur, qua gaudeant in Ecclesia propria disciplina atque integrum servare valeant suum patrimonium, de quo in can. 578.**

§ 2. Ordinariorum locorum est hanc autonomiam servare ac tueri.

§ 1. A true autonomy of life, especially of governance, is recognised for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the patrimony described in can. 578.

§ 2. Local Ordinaries have the responsibility of preserving and safeguarding this autonomy.

SOURCES: § 1: *CD* 35: 3–4; *MR* 13c, 34
§ 2: *LG* 45; *CD* 35: 2; *MR* 9c et d, 28, 52

CROSS REFERENCES: cc. 578, 591, 593, 594

COMMENTARY

Tomás Rincón-Pérez

The true autonomy of each institute

1. *Autonomy and canonical exemption*

The autonomy of life and governance that c. 586 recognizes for all the ICLs is not a substantially new or unknown principle in the canonical order. Since time immemorial each institute has been governed by its own rules and constitutions, seeking to safeguard its own spirit and identity in the body of ecclesial life. This has been particularly so concerning religious life. Still, its formal and general recognition posed a great advance, and it was destined to have great canonical importance especially at this moment when the principle of exemption (see below, and commentary on c. 591) had substantially lost its classical significance. This is confirmed in that the recent doctrine frequently pairs off both concepts (autonomy and exemption) and tries to decipher their differences or at least their mutual

implications.[1] For some, in effect, autonomy and exemption are distinct juridical phenomena, for their natures as well as their foundations, origins, and ends. For others, in contrast, the exemption has lost its effect or the institution has been so transformed to the point that in practice it is confused with lawful autonomy. In reality, the exemption today hardly signifies more than autonomy of life and governance[2] (see commentary on c. 591).

2. *Autonomy as "ius nativum": its ecclesiological foundation*

To better understand the scope of this controversy, we must analyze in detail the principle of autonomy established in the canon. It cannot be emphasized enough that this is a matter of formal recognition and not of an administrative concession by the ecclesiastical authority. That recognition responds, therefore, to the prior existence of an *ius nativum* to autonomy, which was founded on the constitutional principle that emanated from the *conditio libertatis* of the faithful.[3] Perhaps that could have been the the most radical ecclesiological foundation upon which the autonomy recognized for all the ICLs was granted. It is certain that other ecclesiological foundations can be cited, as indeed they are,[4] such as the charismatic origin and public nature of the power by which these institutes are governed. But by doing that, only one of the multiple ways that the faithful acts in *conditio libertatis* and the inherent autonomy of that freedom is specified. An association of the faithful, for example, enjoys great autonomy; greater still if it is a private association despite its not having a charismatic origin or its directives' having public power. Where there is a true communion composed of the elements of unity and diversity, the principle of autonomy is necessarily present as a technical instrument of safeguarding the identity itself of the association inasmuch as it is an expression of that diversity. Canon 586 refers to that concept when it establishes as a reason for being, the ultimate purpose of that autonomy, the power to preserve intact the patrimony of each institute, which, all things considered, is charismatic foundational diversity.[5]

1. Cf., e.g., V. DE PAOLIS, "Exemptio an autonomia institutorum vitae consecrate?" in *Periodica*.71 (1982), pp. 147–177; G. GHIRLANDA, "La giusta autonomia e l'esenzione degli istituti religiosi: fundamenti ed estensione," in *Vita Consacrata* 25 (1989), pp. 679–699; S. PETTINATO, "Esenzione e autonomia degli istituti in vita consacrata," in *Il Diritto Ecclesiastico* 102 (1991), pp. 194–1229.
2. Cf. D.J. ANDRÉS, *Los superiores religiosos según el Código* (Madrid) 1985.
3. Cf. S. PETTINATO, "Esenzione e autonomia...," cit., p. 229.
4. Cf. G. GHIRLANDA, "La giusta autonomia...," cit., pp. 679–699.
5. Cf. Ap. Exhort. *Vita consecrata*, 48.

3. *Range or extension of autonomy*

Canon 586 recognizes a *true* autonomy for each institute. With the qualifier "true" two things are sought to be expressed: on one hand, that the recognized autonomy is due in justice and, as a consequence, that due autonomy, while recognized for each and every one of the institutes, is not of equal measure. Giving to each one its own autonomy is not giving equal autonomy to all, rather due recognition is giving to each one that which pertains to it, according to the nature and character of each institute. Thus, the autonomy enjoyed by an institute of diocesan right is not the same as that enjoyed by an institute of pontifical right. Likewise, the autonomy of a lay institute of pontifical right or of a secular institute (though it might be clerical) is different from the autonomy of a clerical religious institute of pontifical right whose major superiors enjoy power of jurisdiction and are, therefore ordinaries pursuant to the provisions of c. 134 § 1.

But this last point leads us to deal with another problem that the doctrine customarily emphasizes regarding true autonomy. We refer to the scope or extension of said autonomy. The canon expressly talks about the autonomy of life, *praesertim regiminis*, so that it has at its disposal its own discipline inside the Church. In those terms it is undoubtedly understood as the so-called *internal* autonomy. But the problem resides in knowing to what extent is also covered *external* autonomy, that is, the relations outside the institute though apostolic works. In this context the connections between autonomy and exemption are evident. Here is how one doctrinal sector put it: "The evolution of exemption, concludes V. De Paolis,[6] has been rendered in such a form that it is no longer considered as a subtraction from the jurisdiction of the bishop, but as autonomy necessary to preserve the identity of the institutes, pursuant to the law. This autonomy affects primarily the internal order, but also, cumulatively with the local ordinary, the responsibility of the superiors with respect to the works of apostolate, to the extent they are related to the charism."

J. L. Gutiérrez also concluded: "The exemption should be understood as lawful autonomy whether it refers to internal order or to the specific way of practicing the works of apostolate proper to the institute to which it pertains—always with due regard for the territorial authority. In seems to me, therefore, to be of little value to use the word *exemption*, and I consider it more appropriate in reality to speak of a lawful autonomy, and at the same time of coordination with the authority of the territory, which would be greater or lesser to the extent to which an institute has acquired the necessary sanction."

G. Ghirlanda reached similar conclusions, although from a posture of clearly defending the classical institute of the exemption inasmuch as it

6. V. DE PAOLIS, "Exemptio an autonomia...," cit., p. 177.

is distinct from the true autonomy recognized for all institutes. We emphasize that the author maintains that the autonomy of the institutes dedicated to the work of the apostolate, recognized in c. 586, cannot be only internal, but also external since apostolic action belongs to their very nature and because its charism is expressed in that unique activity. Therefore, the members should always be saturated by apostolic spirit and every apostolic activity of religious spirit (c 675 § 1). It is important to emphasize (as the above mentioned author mentions later on) the parallelism between c. 586 and c. 678: autonomy of government cannot be understood only in relation to the internal life of the institute for the same fact that the government of an institute dedicated to works of apostolate is destined to the faithful fulfillment of its own apostolic end, which is an obligation to be urged by bishops themselves in the proper case, as well as is their duty to preserve and defend the autonomy of each institute (c. 586 § 2).[7]

In conformity with the foregoing opinions, it seems clear that one cannot take true autonomy to mean only the capacity to govern and the mere internal self-governance of the institutes. These concepts are necessarily projected outward as they already have been projected by the institutes' own charismatic identities, own ways of operating, and particular spiritualities. Consequently, those external reflections of the institutes' internal ways of being fall under the scope of autonomy, keeping in mind moreover, that their apostolic fecundity stems from fidelity to their own foundational charism, that is, to the vocation and specific mission they entail.

In view of that, there is nothing unusual about the principles that the Code establishes in the chapter dedicated to the apostolate of the religious institutes (cc. 673–683):

the principle of *communion:* "Apostolic action exercised in the name of the Church and by its command is to be performed in union with the Church" (c. 675 § 3);

the principle of *subordination:* "In matters concerning the care of souls, the public exercise of divine worship, and other works of the apostolate, religious are subject to the authority of the bishops, whom they are bound to treat with sincere submission and reverence" (c. 678 § 1);

the principle of *coordination:* "In directing the apostolic works of religious, diocesan bishops must proceed by way of mutual consultation" (c. 678 § 3);

and more still: "Under the direction of the bishop, there is to be a coordination of all apostolic works and actions, with due respect for the character and purpose of each institute and the laws of its foundation" (c. 680).

7. Cf. G. GHIRLANDA, "La giusta autonomia...," cit., pp. 692–694.

Among these principles there is no lack of reflections of the principle of *autonomy*. In the institutes that are dedicated to works of apostolate, apostolic activity forms a part of their own nature. Consequently, c. 675 § 1 concludes that the entire life of religious must be filled with apostolic spirit and at the same time all their apostolic action must be shaped by religious spirit. The lay institutes that are dedicated to works of mercy must stay faithful to the grace of their vocation (c. 676).

But where that reflection of autonomy is most clear is in the norms established by c. 678 § 2: "In the exercise of an external apostolate towards persons outside the institute, religious are also subject to their own superiors and must remain faithful to the discipline of the institute. If the need arises, Bishops themselves are not to fail to insist on this regulation." In conformance with this norm, that is, with the right recognized for the superiors, governed also are the activities entrusted to religious by the diocesan bishop, who remain logically under his authority and direction (c. 681 §1).

As one can well see, the autonomy that some call *external* is not equivalent in any case to independence. This is prevented by the principle of communion on one hand, and the principal of subordination on the other. Neither does internal autonomy have an absolute character; rather it is externally limited in some cases by the power of the Apostolic See and in others by the power of the diocesan bishop. The institutes of pontifical right, in effect, depend immediately and exclusively on the power of the Apostolic See regarding discipline and internal governance (c. 593), while the institutes of diocesan right remain under the special care of the diocesan bishop (c. 594). In any case, the exercise of this external power, including that of the Holy See, is not absolute but is limited equally by the lawful autonomy of each institute.

587 **§ 1. Ad propriam singulorum institutorum vocationem et identitatem fidelius tuendam, in cuiusvis instituti codice fundamentali sen constitutionibus contineri debent, praeter ea quae in can. 578 servanda statuuntur, normae fundamentales circa instituti regimen et sodalium disciplinam, membrorum incorporationem atque institutionem, necnon proprium sacrorum ligaminum obiectum.**

§ 2. Codex huiusmodi a competenti auctoritate Ecclesiae approbatur et tantummodo cum eiusdem consensu mutari potest.

§ 3. In hoc codice elementa spiritualia et iuridica apte componantur; normae tamen absque necessitate ne multiplicentur.

§ 4. Ceterae normae a competenti instituti auctoritate statutae apte in aliis codicibus colligantur, quae tamen iuxta exigentias locorum et temporum congrue recognosci et aptari possunt.

§ 1. To protect more faithfully the vocation and identity of each institute, the fundamental code or constitutions of the institute are to contain, in addition to those elements which are to be preserved in accordance with can. 578, basic norms about the governance of the institute, the discipline of the members, the admission and formation of members, and the proper object of their sacred bonds.

§ 2. This code is approved by the competent ecclesiastical authority, and can be changed only with the consent of the same.

§ 3. In the constitutions, the spiritual and juridical elements are to be aptly harmonised. Norms, however, are not to be multiplied without necessity.

§ 4. Other norms which are established by the competent authority of the institute are to be properly collected in other codes, but these can be conveniently reviewed and adapted according to the needs of time and place.

SOURCES: § 1: *LG* 45; *ES* II: 12
§ 2: *ES* II: 8, 11
§ 3: *MG*: 569; *PC* 4; *ES* II: 4d, 12b, 13
§ 4: *PC* 3; *ES* II: 14

CROSS REFERENCES: cc. 589, 595

COMMENTARY

Tomás Rincón-Pérez

Normative sources

The governance of the institutes of consecrated life are regulated by four kinds of normative sources, differentiated and arranged hierarchically among themselves: 1) the norms of universal law issued by the Holy See and principally contained in this Code; 2) the norms of particular law, diocesan or of the Conferences of Bishops, on subjects that affect the consecrated; 3) the fundamental norms or constitutions of the proper law of each institute contained in the so-called *fundamental code* or *constitutions*, which is drawn up by collegial bodies and approved by the competent authority of the Church; and 4) the remaining norms of the proper law established by the competent authority of each institute.

Canon 587 refers to the last two normative sources which traditionally constituted the so-called *particular law* and which the legislator has deliberately chosen to denominate *proper law* (constitutional and additional) to differentiate it from particular law in the strict sense, which comes principally from the particular churches.

1. *The fundamental code or constitutions* (§§ 1–2)

Throughout history, the fundamental norms by which a religious institute has been identified and ruled have been denominated in several ways. The most frequent norms were rules and constitutions (among the Eastern *typica*). But those norms did not always express the same reality. "By historical circumstances, it happened that some religious institutes, in past times, called the fundamental Code *Rule* and the additional Code *Constitutions*—which had to explain, specify, and apply the fundamental Code. Modern religious institutes denominate the fundamental Code *Constitutions* and frequently call the additional Codes *Rules* (plural)."[1]

Canon 587 opts for the denomination fundamental code or constitutions but by doing so does not intend to modify the historical name that each institute might have given to its fundamental norms or constitutions.

Whatever the name or denomination, each institute has to have a fundamental code that functions to protect the vocation and proper identity of each institute. In a generic way, the canon provides the basic content that a fundamental code must have which are extended to the

1. G. ESCUDERO, *El nuevo derecho de los religiosos* (Madrid 1975), p. 47.

following categories: *a)* that which relates to foundational charism, that is, what defines the nature, end, spirit and character of each institute; what constitutes, in sum, the patrimony of each institute (c. 578); *b)* fundamental norms regarding the governance of the institute and the discipline of its members; *c)* fundamental norms regarding incorporation and formation; and finally, *d)* the definition of the proper object of their sacred bonds.

Within this generic framework of the subject, the Code subsequently established numerous specific aspects that ought to be included in the constitutions. It always followed that the canonical norms referred their specification or express determination to the constitutions and not merely to the proper law.

By referring to the elements that the constitutions must contain, *Ecclesiae Sanctae* II, 12–13 expressly provided two of them: on one hand, the evangelical and theological principles regarding religious life and its union with the Church, and on the other, the basic juridical norms to define clearly the nature, ends, and means of the institute. But consequently it added the necessity of conveniently harmonizing both elements, the spiritual and the juridical, so that the fundamental codes would have a stable foundation and be imbued with true spirituality and vitality, thus having avoided drafting a purely juridical or merely exhortative text.

The same criterion is reproduced now in § 3 of the present canon, and it is important to emphasize this because it was undoubtedly inspired by experiences or ways of acting that were not desirable. Commenting on *Ecclesiae Sanctae*, Escudero already emphasized that the theological element had so dominated the juridical "that constitutions had been written that could be considered purely as books of spiritual literature, spiritual literature more or less certain and profound." Not has it been infrequent, comments the same author, that precise harmonization between the two elements was lacking since they were placed "in different books or in different parts of the same book, or by [having grouped] the principles at the beginning of a chapter as an introduction to the juridical norms."[2]

The drafting and modification of the constitutions is ordinarily the prerogative of the general chapter. *Ecclesiae Sanctae* II, 7 also granted that power to the general council but in a transitional form: only for the time between the termination of the special general council and the first ordinary chapter. The Decree of February 2, 1984 of SCRSI granted a new power to the supreme moderator with the council so that when all are present they would proceed collegially to issue norms regarding what the Code of Canon Law determined for each institute, "and regarding what was judged to be necessary to fill the gaps in the institute's proper law."

2. Ibid., p. 50; cf. E. GAMBARI, *Vita religiosa secondo il Concilio e il nuovo Diritto Canonico* (Rome 1985), pp. 67–81.

But it is also a question of a transitional authority until the next general chapter occurs, the entity upon which it is really incumbent to issue decrees in this regard pursuant to law.

In any case, for the fundamental code to be in effect, it must be approved by the competent authority of the Church, and it can be modified only with its consent (§ 2). The Holy See approves the constitutions of the institutes of pontifical right (c. 589). Regarding the institutes of diocesan right, the competent authority is the bishop of the diocese where the principal house is established. Nevertheless, the bishop must confer with the other diocesan bishops if the institute is to reach into several dioceses (c. 595).

The necessity of pontifical or episcopal approval for each constitution has been a constant and universal norm in the recent centuries. The constitutions that were not the object of pontifical approval were ultimately approved later. Nowadays, it looks like there are few orders having constitutions not formally approved by the Holy See. Among those are the Dominicans, Jesuits, Premonstratensians, and the Carmelite Order of Old Observance.[3]

2. *Complementary codes* (§ 4)

The proper law of an institute is not only composed of the fundamental code, which has constitutive and stable character, but by the rest of the norms established by the competent authority of the institute and properly collected in other codes, denominated by different names: complementary codes, directories, statutes, regulations, etc. The purpose of these additional codes is to apply, determine, and develop the fundamental code either in a systematic form or by sectors or specific subjects, like the *Ratio institutionis*, or norms regarding formation.

In any case, that diversity of names also marks a diversity of natures. For example, a general directory, although it may be revised and accommodate the various circumstances of time and place, pursuant to § 4 of the present canon, has, nevertheless, a character "relatively stable, integral, and organic," and as such "it is eminently appropriate that it possess a structure, composition, and succession of subjects, parallel to those of the constitutions"[4] which it complements. In any case, neither the general directory nor the remaining complementary norms need approval by the competent authority of the Church. But they cannot contradict the constitutions approved by and renewed with the consent of that authority.

3. Cf. E. GAMBARI, *Vita religosa...*, cit., p. 74, note 25.

4. Cf. D.J. ANDRÉS, *El Derecho de los religiosos (comentario al Código)*, 2nd ed. (Madrid 1984), pp. 27 and 29. Cf. also, regarding the *Derecho adicional*, G. ESCUDERO, *El nuevo derecho...*, cit., p. 52.

Consequently, the proper law would be made up of the following: the fundamental code, the general directory, and the body of norms dictated by the internal authority of the institute at all levels, whether chapters or executive regulations of the superiors.

3. *Adaptation of the proper law to the universal law*

For want of an explicit norm, like c. 489 of the *CIC*/1917, and with the aim of putting into effect as soon as possible a canon in reference to the ICL, SCRSI published two Decrees on February 2, 1984:[5] the first one urged the necessary adaptation of the proper law of the institutes to the universal law; and the second dealing with accommodating to the new discipline (cc. 607 and 654) the juridical situations relative to religious profession established for protecting what was provided in the Instruction *Renovationis causam* of 1969, which permitted the general chapter to substitute temporary vows for bonds of another type.

The adaptation referred to by the first Decree was resolved in two distinct operations: the first consisted in correcting all the ways the proper law contradicted canon legislation in the application of c. 6 § 1. This activity did not require normative powers, bearing in mind that the purpose was not to establish norms, but to identify those things were contrary to the Code and to conform them to the Code and then to shape all that to the institute. The responsibility for carrying out this corrective task, pursuant to the Decree, fell to the supreme moderator and the council working collegially.

The second activity required normative powers since it consisted in making operative within the scope of the ICLs the principle of normative decentralization by which numerous norms of the universal law had been left deliberately undetermined and incomplete with the idea that each institute, according to its own charism and particular nature, would determine and specify them in the proper law. This determination at times is prescribed; in other cases it is facultative. The Decree, obviously, urged the required determination only to the extent that the universal law could unfold its efficacy into the proper law of each institute.

In the first phase, this normative activity was entrusted to the supreme moderator collegially with the full council (despite their not being the organ that in principle had those powers attributed to it, at least in reference to constitutions and fundamental codes). The concession of this extraordinary authority is explained, as *Ecclesiae Sanctae* had already done, by the particular circumstances that were occurring in the ICLs es-

5. *AAS* 76 (1984), pp. 498–500. Cf. T. RINCÓN-PÉREZ, "La aplicación del nuevo Código de Derecho canónico en el ámbito de los institutos de vida consagrada," in *Ius Canonicum* 25 (1985), pp. 265–290.

pecially when the general chapter met, and because of the urgency of applying the universal law (if by application we understand not only the fulfillment of what it immediately assured, but also the normative execution of its precepts). In any case, the legislator has taken care that this normative activity is the result of a *collegial* act so as to make it as similar as possible to the way the chapters legislate.

The norms dictated by that extraordinary organ take effect immediately, that is, they do not need any measure of approval by a superior authority, but their effectiveness is transitional until the holding of the ordinary general chapters, without the necessity of calling an urgent or extraordinary meeting.

After the general chapter is convened, it will proceed to establish the definitive norms, either by confirming those already issued collegially by the supreme moderator and the council, or by correcting them, or by issuing new ones, since it is a collegial body with normative or ordinary statutory powers. Once the norms are established by one of those methods, the transitional stage ends and the final one begins, except in matters of norms *in constitutionibus inserendae*, because, in that case, they must be first submitted to the Holy See or diocesan bishop for approval (cc. 587 § 2 and c. 595 § 2).

The above-described procedure must also be followed in the monasteries of nuns, but with the exception that the authority to whom that task is entrusted is either the supreme authority of the order, if it exists, or otherwise, to the person named for that purpose by the Holy See. In any case, this general discipline with respect to the monasteries of nuns, established in the present Decree, in no way hinders, in grave cases, the Pope's power to modify the proper law of an institute, including the monasteries of nuns that are constitutionally associated with a religious institute whose superior has true power over it (cc. 614 and 615).

588 **§ 1. Status vitae consecratae, suapte natura, non est nec clericalis nec laicalis.**

§ 2. Institutum clericale illud dicitur quod, ratione finis seu propositi a fundatore intenti vel vi legitimae traditionis, sub moderamine est clericorum, exercitium ordinis sacri assumit, et qua tale ab Ecclesiae auctoritate agnoscitur.

§ 3. Institutum vero laicale illud appellatur quod, ab Ecclesiae auctoritate qua tale agnitum, vi eius naturae, indolis et finis munus habet proprium, a fundatore vel legitima traditione definitum, exercitium ordinis sacri non includens.

§ 1. In itself, the state of consecrated life is neither clerical nor lay.

§ 2. A clerical institute is one which, by reason of the end or purpose intended by the founder, or by reason of lawful tradition, is under the governance of clerics, implies the exercise of sacred orders, and is recognised as such by the authority of the Church.

§ 3. A lay institute is one which is recognised as such by ecclesiastical authority because, by its nature, character and purpose, its proper role defined by its founder or by lawful tradition, does not include the exercise of sacred orders.

SOURCES: § 1: cc. 107, 488,4°; *LG* 43; *PC* 10, 15; PCIDSVC Resp., 10 feb. 1966 (*AAS* 60 [1968] 360); *ES* II: 27
§ 2: c. 488,4°; *SS* I
§ 3: c. 488,4°; PCIDSVC Resp., 10 feb. 1966 (*AAS* 60 [1968] 360); *PC* 10

CROSS REFERENCES: c. 302

COMMENTARY

Tomás Rincón-Pérez

Clerical and lay institutes

What distinguishes and specifies the consecrated state of life is not whether one takes holy orders or belongs to the ministerial priesthood (more specifically, the order of clerics). What specifies that state, in its intimate nature, is consecration by the profession of the evangelical coun-

sels. Therefore, c. 588 begins by setting down the principle that the state of consecrated members is not, in itself, either clerical or lay. Only canonically speaking can a person be characterized as one or the other. One canonically important consequence, for example, is the fact that only *clerical* religious institutes of pontifical right (c. 596 § 2) as well as the *clerical* societies of apostolic life (c. 732) have power of jurisdiction. For that reason, it was discussed in the work of codification whether it would have been appropriate to transfer this canon to the part dedicated to the religious institutes, leaving aside, therefore, the secular institutes.[1]

That example is sufficient to signal the importance of knowing the clerical or lay character of an institute, in light of the distinguishing criteria established by the canon on which we are commenting. By way of contrast, however, it is useful to consider beforehand some relevant historical facts.

1. *Historical notes*

In c. 488,4° of the *CIC*/1917, a *clerical* religion was one in which many members or the majority of the members (*plerique sodales*) had been ordained as priests. The criterion that the old code followed, therefore, was neither the end nor the governance of the institute, but the number of priests that constituted it. The term *plerique* in the canon could be translated as "the most part," or else "many." In any case, it was the number of priests that made up the distinguishing criterion.

Gradually, nevertheless, the canonical doctrine was incorporating other criteria. Accordingly, the comment was made that "it is not necessary that those destined to become priests constitute materially the greater part of the religion for it to be clerical; it is sufficient that they come to form a *notable* number, while duly and principally adhering to the ends of the institute and the ministry that it practices."[2]

For other commentators, the distinguishing criterion was not determined by the number of priests that formed a part of the institute, but the fact that it was governed by priests, it not being important that "per accidens vel eitam per se plures sint laici quam clerici."[3]

The existence of *clerical* institutes whose lay membership notably exceeded the number of priests, moreover, was confirmed in the practice. The religious of St. Vincent de Paul, for example, were configured as a

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1. Cf. *Comm.* 11 (1979), p. 58.
2. S. ALONSO, commentary on c. 488, in L. MIGUÉLEZ–S. ALONSO-M. CABREROS, *Código de Derecho Canónico* (Salamanca 1953).
3. A. VERMEESCH, *Epitome Iuris Canonici*, 1921, vol. I, no. 447. Cf. R. FORGUES, "Utrum institutum 'clericale' terminus univocus sit?," in *Periodica* 74 (1985), pp. 459–472.

clerical institute "in hoc sensu quod superiores sunt sacerdotes."[4] By way of contrast, there existed religions configured as lay religions despite many of their members' being priests as in the case the Knights Hospitallers of St. John of God.[5] Being recognized by the Church as *clerical* or *lay* has thus become the most practical criterion for recognizing the nature of an institute.

2. *The work of codification*

As is seen from the literal text of c. 488,4° of the *CIC*/1917, the doctrine was evolving toward more flexible criteria, more in accord with reality and jurisprudential practice. In the work of codification there was also a certain evolution. Thus, in the canon of the *schema* of 1977 that was sent for general consultation, only two of the criteria mentioned by the doctrine appeared: the assumption of the exercise of holy orders, and recognition as *clerical* by the authority of the Church. The *lay* institute was not defined explicitly. In the *schema* that was submitted for discussion in 1979, besides having already acquired an explicit and positive definition of the lay institute, a variation was introduced in the literal tenor of the prior *schema* by placing emphasis on the criterion of recognition as clerical by the authority of the Church, "attenta assumptione exercitii ordinis sacri a Fundatore definita vel legitima traditione comprobata."[6]

The lack of a third criterion was noted in the discussion of this canon, which had already been applied in the *schema* "De Populo Dei" to define the *clerical* associations of faithful, under the phrase "sub moderamine sunt clericorum." The secretary of the Commission pointed out in this regard that, pursuant to a response of the SCDF to a question proposed by the Commission, lay members also could partake of the power of jurisdiction when "singulis pro causis auctoritas Ecclesiae suprema ipsis concedit." But this did not hinder the propriety of adding to the definition of the clerical institutes the expression "quae sub moderamine sunt clericorum."

The majority approved this proposal. In contrast, the proposal of one group to allow each institute to determine in its constitutions if it was clerical, lay, or "indifferent" was rejected.[7]

4. R. FORGUES, "Utrum institutum...," cit., p. 464.

5. A. GUTIÉRREZ, "Participatio laicorum in regimine religionis clericalis," in *Commentarium Pro Religiosis* 48 (1967), p. 378.

6. *Comm.* 11 (1979), p. 57.

7. *Comm.* 11 (1979), pp. 59 and 61.

3. *The criteria for classification in c. 588*

In the first place, the legislator maintains the classical bipartition of clerical and lay. The lack of a third route is held by some[8] to be a serious problem, considering that "indifferent" institutions exist, which, strictly speaking, cannot be categorized as either clerical or lay. But the canonical problems that a non-definition like this would lead to should also be considered.

The canon is situated among the common norms of the ICLs. Hence, it affects the religious institutes and the secular institutes and, by reference to c. 732, the societies of apostolic life. Another matter is that the *clerical* secular institutes of pontifical right are prevented from displaying, as a matter of principle, the power of jurisdiction that c. 596 § 2 grants to religious institutes.

a) *Clerical institutes*

The criteria that qualify an institute as clerical are the following:

— being under the direction of clerics;

— assuming as an end the assumption of the exercise of holy orders; and

— the recognition as clerical by the authority of the Church.

These criteria have to be taken together, that is, none of them in isolation would be sufficient to determine the clerical or lay nature of an institute. But from the practical point of view and leaving aside the possible difficulties that a certain specific case could present, the last criterion is determined by the recognition that the ecclesiastical authority makes in this regard, which should also be inspired by legal criteria, as well as the specific peculiarities of each institute.

The biggest problem, already present in the work of revision and that crops up among the commentators, is that it poses the criterion expressed in the phrase *sub moderamine est clericorum*. Taken literally, this criterion makes it impossible for lay members who are a part of clerical institute to hold offices of governance, or, more correctly stated, of becoming superiors. Given the clerical nature of the institute, it is logical that they cannot be superior general. In the present canonical system, it also seems difficult for them to become major superiors considering that in the case of the religious institutes of pontifical right such superiors have power of jurisdiction and are ordinaries. But in practice there exists, it seems,[9] clerical institutes in which the *local* superiors can be lay. Does that practice

8. Cf. R. FORGUES, "Utrum institutum...," cit., p. 471. In this connection, see Ap. Exhort. *Vita consecrata*, n. 61, where *mixed institutes* are discussed and a special commission is created to clarify this issue.

9. Cf. R. FORGUES, "Utrum institutum...," cit., p. 471.

contradict the canon's criterion expressed in the phrase *sub moderamine est clericorum*? And by extension, are lay members completely excluded from holding the office of superior, including that of *local* superior? It matters little that we would give a negative theoretical response if the practice decides otherwise. Perhaps that is why an authentic interpretation would be appropriate in this regard to explain the scope of the term *moderamen clericorum*.

b) *Lay institutes*

Regarding the lay institutes, their nature is determined by only two criteria: recognition as such by the authority of the Church and the exercise of holy orders not being included among the ends proper to the institute. The fact that priests exist among its members or that they can hold office as superiors is not at odds, therefore, with the lay nature of an institute. "The holy synod declares that there is nothing to prevent some members of institutes of brothers being admitted to holy orders, the lay character of the institutes remaining intact, by provision of their general chapter and in order to meet the need for priestly ministration in their houses" (*PC* 10). The norm under discussion complies with this conciliar declaration by no longer considering the presence or absence of priests among its members as a criterion for the determination of the lay nature of an institute, but rather whether the exercise of the priestly ministry is included among the ends proper to the institute. There is a close analogy here to what happened in the associations of the faithful. Pursuant to c. 302, the element or criterion that defines an association of clerics as clerical is the assumption of the exercise of holy orders among its ends. An association which consists exclusively of clerics is not clerical, therefore, if its end is to be, for example, the fostering of a specific priestly spirituality among its members. In the sphere of the ICLs, the priests who form a part of the lay institute exercise the priesthood to attend to the ministerial necessities of the houses of the institute, but the exercise of priestly ministry is not among the institute's ends.

589 **Institutum vitae consecratae dicitur iuris pontificii, si a Sede Apostolica erectum aut per eiusdem formale decretum approbatum est; iuris vero dioecesani, si ab Episcopo dioecesano erectum, approbationis decretum a Sede Apostolica non est consecutum.**

An institute of consecrated life is of pontifical right if it has been established by the Apostolic See, or approved by it by means of a formal decree. An institute is of diocesan right if it has been established by the diocesan bishop and has not obtained a decree of approval from the Apostolic See.

SOURCES: c. 488,3°; SCR Decr. *Quod iam*, 30 nov. 1922 (*AAS* 14 [1922] 644); SCRSI *Normae*, 20 iun. 1975

CROSS REFERENCES: cc. 579, 593, 594

COMMENTARY

Tomás Rincón-Pérez

Institutes of pontifical right and of diocesan right

Once the distinction between *exempt* and *non-exempt* had disappeared (or at least once its canonical importance had been diluted), the distinction established by c. 589 between institutes of pontifical right and diocesan right acquired more juridical prominence. The former are the institutes that have been erected by the Apostolic See or approved by it through means of a formal decree. Institutes of diocesan right are those erected by the bishop that still have not received the decree of approval issued by the Holy See.

Except for the first formal erection of the institute (c. 570) and this subsequent approval by the Apostolic See by formal decree, which converts it into an institute of pontifical right, the universal law does not regulate any of its other procedural steps customarily taken by an institute in its infant stages in the Church until it and its constitutions are finally approved.

According to the standard practice, inspired by the norms of the SCR of March 6, 1921,[1] the route normally taken is the following:

1. *AAS* 13 (1921), pp. 312–319. Cf. G. ESCUDERO, *El nuevo derecho de religiosos* (Madrid 1975), p. 59.

1°) An association is established *in fact* that is well received by the bishop, and after a certain time, it may be formally erected as an association and be endowed with a juridical personality.

2°) When the intuition is considered viable, the bishop will address himself to the Holy See informing it clearly of everything necessary to judge seriously the opportunity of founding a new institute. This would constitute the prior consultation of the Apostolic See as required by c. 579.

3°) Once the permission or the *nihil obstat* of the Holy See is obtained or, probably, once the consultation has occurred, and without the necessity of obtaining permission *ad validitatem*, the bishop can proceed to the institute's formal erection as an ICL and the approval of its constitutions.

4°) After an appropriate time has passed, when the institute expands significantly to various dioceses, has a sufficient membership, and evidence of vitality, all assured by secret testimonial letters from the various ordinaries, the *decretum laudis* is requested. In practice, the approval *ad experimentum* of the constitutions accompanies the granting of the decree of praise. Once that decree is made formal, the institute becomes one of pontifical right.

5°) In the practice we have discussed which is inspired by the abovementioned norms of 1921, after the *decretum laudis*, there is still a subsequent step: the decree finally approving the institute and its constitutions. But sometimes, when all the circumstances are favorable and there is no reason to defer its final approval, this approval is given without there having been a decree of praise.

Given the canonical importance that being an institution of pontifical right has today, there is a basis to think that the formal decree of approval by which an institute acquires that rank is not the old *decretum laudis or laudis testimonium* (c. 492 § 2, *CIC*/1917), but the decree of final approval. Canon 589 refers always to approval by the Apostolic See by means of a formal decree. That is when an institute begins to be of pontifical right.

Moreover, it must keep in mind that c. 595 now grants the privilege of approving the constitutions, confirming amendments thereto, and dealing with the most important matters of the institute to the bishop of the principal seat of an institute of diocesan right. Consequently, it seems that he has the main role in the process of soliciting the decree of formal approval from the Holy See, after having consulted with the rest of the bishops of the dioceses where the institute has houses.

The canonical importance to which we have alluded, is based on the fact that, what in the old discipline was founded on an exemption, today is based on being clerical and of pontifical right. For example, previously

only the exempt clerical religions enjoyed ecclesiastical jurisdiction, strictly speaking, because their major superiors were *ordinaries*. Nowadays (c. 596 § 2), the clerical religious institutes of pontifical right obtain power of ecclesiastical governance or jurisdiction. As a consequence of that change, and by way of example, pursuant to the old code (c. 1579), the judge of first instance for controversies between exempt religious of the same clerical religion was the provincial superior while if the controversy arose between the individuals of the same non-exempt religious, then the judge was the local ordinary. Today, pursuant to c. 1427, it is no longer being exempt, but being of *pontifical right* that determines that the judge of first instance will be the provincial superior, or in the case of an autonomous monastery or *sui iuris*, it will be the local abbot.

590 **§ 1. Instituta vitae consecratae, utpote ad Dei totiusque Ecclesiae servitium speciali modo dicata, supremae eiusdem auctoritati peculiari ratione subduntur.**

§ 2. Singuli sodales Summo Pontifici, tamquam supremo eorum Superiori, etiam ratione sacri vinculi oboedientiae parere tenentur.

§ 1. Institutes of consecrated life, since they are dedicated in a special way to the service of God and of the whole Church, are in a particular manner subject to its supreme authority.

§ 2. The individual members are bound to obey the Supreme Pontiff as their highest Superior, by reason also of their sacred bond of obedience.

SOURCES: § 1: *LG* 44; *PC* 5; *RC* 2
§ 2: c. 499 § 1; *MR* 22

CROSS REFERENCES: cc. 336, 591, 593

COMMENTARY

Tomás Rincón-Pérez

Dependence on the supreme authority of the Church

Established here, starting from this canon and up to c. 596, are the generic legal criteria that govern the exercise of power regarding the ICLs, and they also apply to the SALs by reference pursuant to c. 732. To better understand their scope, apart from keeping in view the distinction between exempt and non-exempt institutes and between clerical and lay institutes, it is likewise necessary to consider another series of concepts or realities. In effect, an internal order and external order operates in each institute. There exists, moreover, an external power (hierarchy) that has an influence on the internal order or governance, and an external power or hierarchy that is exercised only over the external order of the institute. Along with this external power is the internal power or hierarchy that operates fundamentally in the internal order, but with canonical reflections in the external work of religious subjects. That internal power is manifested doubly: personally and collegially through the superiors and the chapters.

With respect to the Roman Pontiff, c. 590 provides that all the institutes of whatever kind are subject to his supreme authority. Therefore, it

is a question of maximum power both external and internal and that is exercised over the external order as well as over the internal order of each institute. Perhaps that is why his power to exempt the ICLs from governance by the local ordinaries, as recognized in the following c. 591, does not exactly correspond to the classical category of canonical exemption. The privilege of exemption was founded on the idea that the institutes depended directly and immediately on the local authority. Ever since the idea prevailed that the institutes, because of their special dedication to God and to the service of all the Church, depended ordinarily, directly, and immediately on the Roman Pontiff, the fact that, at any given moment, the Pope could reserve the whole jurisdiction to himself for the common good, it operated as a non-concession of that jurisdiction more than as a privilege of immunity or of freedom from the authority of the local ordinaries.

But besides that supreme power over external governance, the Pope has maximum internal authority. He is indeed a *Superior* in the strict sense that this term has in the world of consecrated life; he is the vertex or head of the internal hierarchy to the point that the members of those institutes, whether religious or secular, owe obedience to the Pope, including by reason of their vows or other sacred bonds that they assumed by profession or by becoming incorporated into an institute. This had already been established by c. 499 of the *CIC*/1917, having resolved a previously debated question by declaring that the Pope could give orders by virtue of the vow of obedience, without the necessity of the religious taking a special vow of obedience to the Pope.

For practical purposes we understand that the supreme authority to which all consecrated are directly subject is the Roman Pontiff. This is how § 2 of the present canon also views the matter. It is important to make clear, nevertheless, that the supreme authority of the Church to which § 1 refers, is not only the Pope in his primatial function, but also the Episcopal College, which, in union with its head and never without that head, has supreme and full power over all the Church (c. 336) and, therefore, over all the institutes and their members.

591 **Quo melius institutorum bono atque apostolatus necessitatibus provideatur, Summus Pontifex, ratione sui in universam Ecclesiam primatus, intuitu utilitatis communis, instituta vitae consecratae ab Ordinariorum loci regimine eximere potest sibique soli vel alii ecclesiasticae auctoritati subicere.**

The better to ensure the welfare of institutes and the needs of the apostolate, the Supreme Pontiff, by virtue of his primacy in the universal Church, and with a view to the common good, can withdraw institutes of consecrated life from the governance of local Ordinaries, and subject them to himself alone, or to some other ecclesiastical authority.

SOURCES: cc. 488,2°, 615, 618 § 1; SCR Decr. *Religiosae Sanctimonialium*, 23 iun. 1923 (*AAS* 15 [1923] 357–358); *LG* 45; *CD* 35, 3; *MR* 8, 22

CROSS REFERENCES: cc. 586; 590; 593; 578; 801; 806; 831

COMMENTARY

Tomás Rincón-Pérez

Canonical exemption

In connection with the autonomy spoken of in c. 586, recognized for all the institutes and being of a marked internal character, though with clear external reflections, c. 591 sanctions the principle, previously called privilege, of canonical exemption, by virtue of which the institutes that enjoyed it remained apart from the jurisdiction of the local ordinaries and were exclusively subject to the Roman Pontiff or other ecclesiastical authority.

1. *Historical notes*

For centuries canonical exemption has been, if not the only, at least the most important instrument through which the relations between religious and bishops has been ruled. Its origin harkens back to those historical moments when the monasteries came together and formed units that transcended the limits of one diocese. It became generalized and implanted finally when the great orders, like the mendicant orders, began to

make convent life compatible with an intense pastoral life outside the walls of the convent.

In its origins, therefore, the old institution of exemption arose with the purpose of regulating the relations between the religious orders and the bishops of the dioceses where they practiced their ministries. Some of the relations were less than cordial because sometimes the orders emphasized their independence while scorning the function of the bishop and other times, because the bishops themselves abusively interfered in the life and governance of the monasteries and convents.

It is necessary to note, moreover, that since the beginning the exemption was configured as a *privilege* by which religious persons and places were outside the jurisdiction of the diocesan bishop, being directly subject to the primatial power of the Roman Pontiff.

But if by privilege they were outside the jurisdiction of the bishop, it was because religious orders were subject in principle to the jurisdiction of the bishop and only by the privilege of exemption could they be outside that jurisdiction. In the beginnings of religious life that was in fact what used to happen: monastic life was circumscribed by the limits of one diocese, and the monks, like the rest of the faithful, depended directly on the bishop of the respective diocese. But there was a moment when the orders became universal, in a manner of speaking; but the awareness lingered, nevertheless, that they continued to depend directly on the bishop, and only by privilege would they come to depend directly on the Pope.

In view of this historical explanation, it is no wonder that the religious institute of canonical exemption would suffer a considerable, though slow, evolution as it became understood that the religious institutes (first the orders, later the congregations, and afterwards the secular institutes) were established with the mission of serving the universal Church by being directly subject to the Pope but without diminishing their simultaneous dependence on the local ordinary in multiple aspects of their pastoral life. The Council of Trent had already established this theme. There, the exemption was preserved, but many of its norms restricted it to its true limits.[1] The *ministerium verbi*, for example, remained under the immediate protection of the bishop because the regulars needed permission to exercise that ministry in churches different from their order. Likewise, they needed the bishop's permission to hear the confessions of laymen (*sess.* 23, *De reformatione*, c. 15). They were also immediately subject to the bishop's jurisdiction in everything relative to the care of souls and the administration of the sacraments. The Council of Trent, in sum, recognized the right of the local ordinaries, by virtue of apostolic authority, to visit the churches, including the exempt churches

1. Cf. L. GUTIÉRREZ, "De ratione inter episcopos et religiosos iuxta Concilium Vaticanum II," in *Commentarium Pro Religiosis* 45 (1966), p. 141.

(cf. *sess.* VII, c. 8). This still meant that there was a compromise between what was required by the exemption (dependence on the Pope) and the power that was conferred on the bishop, who acted in certain situations with apostolic authority.

2. *Canonical exemption in the previous Code*

The *CIC* of 1917 largely followed the discipline of the Council of Trent since it assumed the principle of canonical exemption but it did not govern exemptions in numerous cases where the jurisdiction of the local ordinary applied (c. 615). Moreover, religious congregations were configured as true religious institutes. Based on the distinction between orders (solemn vows) and congregations (simple vows), the code established the exemption *a iure* for religious orders, while the principle of *non-exemption* ruled for congregations, except in special cases where the exemption was granted (c. 618 § 1). In any case, neither the exempt congregations (*a iure* or by special concession) were completely immune from the jurisdiction of the bishop, nor were the non-exempt congregations deprived of a certain autonomy. That did not prevent the conclusion that, in the discipline of the old code, the institution of exemption was central, around which revolved a good part of the law of religious. Just think, for example, about the numerous norms where the distinction between exempt and non-exempt institutes played an important role. No doubt, the most important of all norms was the one that conferred power of jurisdiction on the superiors, as long as it pertained to *exempt* clerical institutes. It was of great canonical importance that the canonical exemption was thus erected on a basic criterion of distinction between institutes.

3. *Exemption in Vatican Council II*

For its importance, logically, the question of canonical exemption of religious did not go unnoticed in Vatican Council II. The question provoked broad and lively debates in the preparatory stages of the Council, as well as during the time of the Council itself.[2]

The results of those conciliar debates were the texts handed down to us by *Lumen gentium* 45 and *Christus Dominus* 35. In the first of those, which constituted the immediate and almost literal source of the present canon, the principle was supported that the "Roman Pontiff, because of his primacy over all the Church, with a view toward providing better for

2. Cf. J. GARCÍA MARTÍN, *Exemptio religiosorum iuxta Concilium Vaticanum II*, (Rome 1980); idem, "Exemptio religiosorum iuxta Concilium Vaticanum II," in *Commentarium Pro Religiosis* 60 (1979), pp. 281–330; 61 (1980), pp. 3–36 and 97–123.

the needs of the Lord's flock, *can withdraw* from the jurisdiction of the Ordinary and make subject to his exclusive authority any institute of perfection and each and every of its members. Likewise, the members can be left or entrusted to the patriarchal authority itself." Next to this principle of dependency on the Roman Pontiff and to the consequent autonomy regarding the bishops, the Conciliar text thereafter added the simultaneous principle of submission to the bishops "by reason of their pastoral authority in the particular Churches and because of the necessary unity and harmony in the apostolic work."

But it would not be easy to understand the nature and scope of the exemption for religious if we were to follow only the text of *Lumen gentium*. It is necessary to keep in mind the complementary text of *Christus Dominus*. In this regard one should note that the main question under debate, both in the scientific circles and the conciliar meeting itself, consisted in determining if the exemption had to be preserved within the limits of the internal governance of the institutes or whether it was to be expanded also to the external order; and if by internal order one was to understand only governance and discipline or whether it should also include the apostolic works proper to each institute, which are bound to the institute's foundational charism.

In this sense, *Christus Dominus* supplemented and specified the doctrine of *Lumen gentium* since it determined, on one hand, the primary purpose of exemption, and on the other, it delimited the canonical cases in which said exemption does not take place. In other words, the conciliar text makes clear the primary aspect to which the exemption applies and the other aspects in which the principle of subordination to the jurisdiction of the bishop is present. The exemption, in effect, by which religious directly depend on the Supreme Pontiff and by which the jurisdiction of the bishops is diminished, "ordinem Institutorum internum potissimum respicit," does not hinder (as the text subsequently explains) the religious' being subordinated to the jurisdiction of the bishop in each diocese *ad normam iuris*.

In the first *schemata* of the texts of *Lumen gentium*, previously summarized, the term *potissimum* appeared as a way of expressing that the exemption was neither absolute nor unlimited because *potissimum* referred to the internal order. But there were conciliar fathers who advocated its suppression, even suggesting the substitution of the word *tantum* for it, so as to preserve the exemption inside the limits of internal governance.[3] That would have coincided with what we now call the "just autonomy" of the institutes.

3. Cf. CARD. RUFFINI and CARD. SILVA HENRIQUEZ, in *Acta et Doc. Conc. Vat. II*, Series II, vol. II, pars IV, p. 238.

In the discussion regarding the *schema* of *Christus Dominus*, there appeared again two opposing positions: one argued that the exemption only concerned internal order, while the external works of the apostolate remained under the direction of the bishops for which it would be necessary to suppress the word *potissimum*, even the phrase *ad normam iuris*.[4] On the other side was the classical approach according to which the exemption concerned both internal and external order, save the cases excepted by law, because of which the primary reference to internal order expressed in the word *potissimum* would mean either the abolition or, at least, a substantial weakening of the exemption.[5]

In the conciliar text, nevertheless, the word *potissimum* was preserved, as was the phrase *ad normam iuris* because it concerned dependence on the bishops. But it added something more in the following paragraph that was especially important to delimiting the scope of the exemption. In effect, all religious, *exempt* and *non-exempt*, were subordinate to the power of the local ordinaries in regard to the following activities: the public exercise of divine worship, the care of souls, holy preaching to the people, religious and moral teaching, catechetical instruction and liturgical formation of the faithful (principally of children), the decorum of clerical order, and other various works related to the exercise of the holy apostolate.

The dependence on the jurisdiction of the bishop in so many matters, whether exempt or not, must be understood in the light of this other principle stated previously: "Religious who are engaged in the external apostolate should be inspired by the spirit of their own institute, should remain faithful to the observance of their rule, and should be obedient to their superiors. Bishops, on their part, should not fail to insist on this obligation" (*CD* 35, 2).

4. *Exemption and subordination to the diocesan bishop in the CIC*

With this historical background in view and the doctrine established in Vatican Council II, there is nothing unusual about c. 591's having been the object of multiple and very different assessments.

For now, before delving into those assessments, it is important to emphasize that there is a series of unquestionable facts in the current canonical discipline. The first one is, in contrast to the prior code in the *CIC*, in which we said that the exemption was a key element in the law of religious, only c. 591 referred to exemption by the locution *eximi potest*. Gone from its norms was the distinction between exempt and non-exempt

4. Cf. ibid., III, II, pp. 412, 760, 775.
5. Cf. ibid., II, II, pp. 83–84.

institutes and between exempt *a iure* and exempt by special concession. This canon did not consider any institute exempt *a iure*, but rather it established only the possibility that the Supreme Pontiff could grant such an exemption when it was proposed for the common good.

In the current discipline, for the purpose of having a religious institute enjoy the power of jurisdiction, being exempt or not no longer has any relevance. Apart from its clerical nature, which today which results in an institute's having that power of jurisdiction *a iure* (c. 596 § 2), what is important is that it is an institute of pontifical right. For all the institutes, without exception, a just autonomy of life is recognized, especially regarding governance (c. 586). In that aspect, all are *exempt* from the authority of the bishop, especially the institutes of pontifical right, which, because of their very nature, immediately and exclusively depend on the power of the Apostolic See concerning internal governance and discipline (c. 593).

In this same sense, it is fitting to say that cc. 678–680 provided that the normative principles regarding the apostolate which, inspired by *Christus Dominus*, 35, *Ecclesiae Sanctae*, I, 22–44, and *Mutuae relationes*, are applicable to all religious institutes, there being no norm to except the possibly "exempt" institutes.

With respect to the bishop's right of visitation, c. 683 makes no exception for the institutes that might be exempt. The only exception to this right of visitation is for the schools exclusively assigned to the students of the institute itself; but this exception is applicable to all the institutes by virtue of the principle of autonomy. Canon 397, for its part, lists the subjects that are liable to visitation by the bishop, excepting, save in those cases determined by law, not the exempt religious, as c. 344 § 2 of the *CIC* 1917 used to provide, but those that belong to an institute of pontifical right because the accent is no longer put on the exemption but on the fact that they are of pontifical right.

We saw above how *Christus Dominus* 35 subjected many of the activities of religious, *exempt* or not, to the authority of the bishop. Canon 678 § 1 gathers from among those activities the ones that refer to the care of souls, the public exercise of divine worship, and other works of apostolate. For its part, c. 801 states that the schools created by religious institutes for Catholic education, be established with the consent of the diocesan bishop. Pursuant to c. 806 § 1, likewise, the right of vigilance and visitation of the Catholic schools established in his territory pertain to the bishop, and he may even dictate norms regarding the general organization of those schools, and such norms are also valid for those directed by religious without prejudice to their autonomy in reference to internal governance of those schools. Note that in c. 1382 of the *CIC*/1917 the internal schools of those professed in an *exempt* religious institute remained excluded from the Episcopal visitation.

One more example of the subordination of religious—for all, since the law does not make distinctions—to the local ordinary, in the aspect of *munus docendi*, is constituted by c. 831: without permission of the local ordinary, they may write nothing in newspapers, pamphlets or magazines that clearly tend to attack the Catholic religion or good manners, and they must not take part in radio or television broadcasts that concern questions and customs of faith without their having been submitted to requirements imposed by the respective Bishops' Conferences.

5. *Canonical exemption in the recent doctrinal debate*

In view of this data, it is no wonder that the doctrine today poses a question regarding the specific content of the exemption and it practical operating ability. And in truth, it demonstrates that it is not easy to discern what the fact of being an exempt institute adds as opposed to being an autonomous institute—which all of them are—or one of pontifical right.

But let us look more explicitly at some of the terms of the recent doctrinal debate. It was a debate that took place between two counterposed positions: one position was held by those who consider the classical exemption as an institution relegated to history, and the other position was held by those who preserved the classical concept of exemption as valid and operative, coming even to consider as exempt the institutes that previously enjoyed that privilege, whether *a iure* or by special concession.

For some authors (see commentary on c. 586 regarding just autonomy recognized for all the institutes) there has occurred an evolution in the exemption of such a nature that it is no longer considered as a diminution of the jurisdiction of the bishop, but as an autonomy necessary to preserve the identities of the institutes which is why the exemption in the Code would be better denominated today as lawful autonomy.[6]

But one of the authors concerned with the issue of exemption for religious, both in the Council and in the Code, has been J. García Martín.[7] For this author, what the conciliar text calls "exemption is, in the first place, the constitutional dependence of the institutes of the Roman Pontiff and successively, as a consequence, the independence of the local Ordinary." Now then, the author continues, "if 'exemption' is identified with primary and original dependence on the Roman Pontiff, inasmuch as he is the primate of the universal Church, the incongruence or impropriety of the classical term can be clearly seen inasmuch as it presupposes

6. Cf. V. DE PAOLIS, "Exemptio an autonomia institutorum vitae consecratae?," in *Periodica* (1982), p. 177.

7. Cf. among his works, *Exemptio religiosorum iuxta Concilium Vaticanum II* (Rome 1980); "Elaboración e interpretación del c. 591 sobre la exención según los principios del C. Vaticano II," in *Commentarium Pro Religiosis* 72 (1991), pp. 49–92.

dependency on the local ordinary to become, through the diminution of his power, dependence on the Roman Pontiff."[8]

There was, therefore, an inversion of the elements of the classical exemption: while dependence on the diocesan bishop was considered original and innate, the privilege of exemption made sense, but with the terms inverted, that is, when the original and innate dependency is on the Roman Pontiff, the autonomy respecting the bishop prevails regarding internal order and works of a universal character and of common usefulness, which does not prevent religious' in each one of the dioceses where they work from being subject to the local ordinaries in specific aspects like the care of souls or preaching to the people of God. None of this would be an exemption, but common governance: autonomy, original dependency on the Roman Pontiff, and subordination to the functions proper to the diocesan bishop. Pursuant to c. 381, it falls to the bishop "all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority." Canon 591 could entail a case of *causa excepta* or pontifical reservation, but then not even the locution *eximi potest* of the canon would mean a true exemption in the classical sense of the term, but rather it would have to be considered superfluous or redundant, considering that religious are constitutively subject to the Roman Pontiff.[9]

For the cited author, in summary, "the process of codification has shown us that the problem of exemption of the regulars has been brilliantly overcome. It has ceased to be a difficult issue and it has gone on to become a historical issue. The privilege of exemption of the regulars and religious of the *CIC*/1917 belongs to history."[10]

On the opposite side of the above-described opinion it is appropriate to place the position adopted by G. Ghirlanda.[11] His critical attitude toward those who considered the institution of exemption to have disappeared after the Council, as it already had been configured in the *CIC* 1917, or toward those who did not consider the external exemption to be in effect that all the religious orders and some congregations enjoyed, thus reducing the exemption envisioned in c. 591 to a mere power recognized for the Supreme Pontiff to grant it in the future, which would lead to presently configuring the exemption as an abstract juridical institution, bore witness to that opposition.

Facing that opinion, which astonished him, Ghirlanda maintained the thesis that because of its nature, origin, and end, the exemption should

8. "Elaboración e interpretación del c. 591...," cit., p. 90.
9. Cf. ibid., p. 92.
10. Ibid., p. 76.
11. "La giusta autonomia e l'esenzione degli istituti religiosi: fondamenti ed estensione," in *Vita consacrata* 25 (1989), pp. 689–691.

not be confused with the just autonomy recognized for all the institutes by c. 586. The exemption is a juridical institution by which the Roman Pontiff, through particular laws and privileges, establishes a fuller autonomy with the purpose of better preserving the charism of the institute. This charism is thereby also more clearly expressed in the universal character of the institute and in its apostolic efficacy as a participation in the pastoral solicitude of the Supreme Pontiff for all the Church.

In view of the present Code's not establishing or determining the scope of the exemption (aside from the general norm envisioned in c. 591), Ghirlanda adds that the pontifical particular laws and privileges are the normative sources that shape the proper law of the exempt institute, norms that can only be revoked by an act of the Roman Pontiff, citing in this respect, c. 4 regarding acquired rights and privileges. Consequently, he adds, one can in no way affirm that the exemption enjoyed by orders and congregations under the governance of the *CIC*/1917 is no longer in effect. The exemption is envisioned generally in c. 591 and is determined by the proper law.

With respect to this last question, that is, with respect to the institutes that up to now have enjoyed an exemption, it is true, responds D. J. Andrés,[12] that a norm can be put forth for respecting acquired rights and privileges granted by the Apostolic See. Nevertheless, he adds, to claim them, it must be shown that *a)* that they were in use and not revoked before the new Code and *b)* they were not expressly revoked by the canons of the present Code. In effect, the conciliar and post-conciliar documents have revoked the exemption in many respects. On the other hand, there are the canons regarding the apostolate (cc. 673–683) and especially c. 678 § 1.

For S. Pettinato,[13] exemption and autonomy are two different juridical phenomena because they describe different realities and especially because they are based on diverse foundations: original and "innate," in the case of autonomy, and possible and "dative," in the case of the exemption. In this sense, "c. 586 delineates the normal situation of the institutes in the canonical system: the autonomy which they enjoy is the fundamental criterion by which such institutes are related to any other reality of the system. Canon 591, on the other hand, envisages a norm by which an act modifying that situation can happen with respect to a specific relationship, which has to take place precisely between the institutes themselves and the power of the local Ordinary, which withdraws institutes from the subordination due, according to law, to local jurisdiction, and subject them directly to the authority of the Roman Pontiff or to some other ecclesiastical authority."

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12. Cf. "I rapporti tra gerarchia e religiosi," in *Il nuovo Diritto dei religiosi* (Rome 1986), pp. 201–202.
13. "Esenzione e autonomia degli istituti," in *Il Diritto Ecclesiastico* 102 (1991), p. 229.

All things considered, adds Pettinato, "while the exemption looks to resolve contingent problems in the relations with the local Ordinary to make the service to primatial authority more expeditious, autonomy is the development and the positive realization of a constitutional design that has its origin in the *conditio libertatis* of the faithful."

Turning to the existence and literalness of c. 591, this last thesis seems irrefutable on the theoretical plane. But on the practical plane, the plane of specific operational ability, the question remains regarding the scope of that subsequent act by which the institutes were freed from subordination to the local jurisdiction to become directly subject to the authority of the Roman Pontiff.

As we stated above, *Christus Dominus* 35, 3 established that not even the exemption "prevents the religious' being subordinated to the jurisdiction of the bishop in each diocese according to law," and immediately thereafter it stated (35, 4) a list of specific activities of religious that were subject to the principle of subordination. Of all these activities, c. 678 collects only those relative to the care of souls, the exercise of public worship, and other works of apostolate; but the rest (holy preaching, moral and religious teaching, catechetical instruction, liturgical formation of the faithful, etc.) are regulated in other parts of the Code, principally in *Liber* III (cf. 801, 806, 831).

In view of all that, it is not easy to know what might constitute an act of liberation from the governance of the local authority normatively envisaged in c. 591 and configured as a canonical exemption—a figure different from autonomy.

Perhaps for that reason Gambari is right when he states that what is established by c. 591 does not directly refer to the so-called privilege of exemption about which so much has been written and spoken, and does not itself look to defend that classical privilege, but over all, tries to give a foundation and to confirm the power of the Roman Pontiff to regulate the relations of the ICLs with respect to the authority of the bishop. Therefore, concludes this author, the specific application of c. 591 is found in c. 590 for all the institutes and in c. 593 for the institutes of pontifical right. Given the breadth and generality of the canon, it is appropriate to think that it would include also the Pope's exercise of the faculty of granting the privilege of the exemption in the sense of c. 76. But it is not easy to see how it could be that way.[14]

And truly, even supposing that c. 591 were to sanction the principle of exemption, in view of all the explained facts, it is not easy to see what would be added today if an autonomous entity that is also of pontifical right was, in addition, an *exempt* institute.

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14. Cf. E. GAMBARI, *I Religiosi nel Codice (Commento ai singuli canoni)*, (Milan 1986), p. 68.

592 § 1. **Quo melius institutorum communio cum Sede Apostolica foveatur, modo et tempore ab eadem statutis, quilibet supremus Moderator brevem conspectum status et vitae instituti eidem Apostolicae Sedi mittat.**

§ 2. **Cuiuslibet instituti Moderatores promoveant notitiam documentorum Sanctae Sedis, quae sodales sibi concreditos respiciunt, eorumque observantiam curent.**

§ 1. To promote closer union between institutes and the apostolic See, each supreme Moderator is to send a brief account of the state and life of the institute to the same Apostolic See, in the manner and at the time it lays down.

§ 2. Moderators of each institute are to promote a knowledge of the documents issued by the Holy See which affect the members entrusted to them, and are to ensure that these documents are observed.

SOURCES: § 1: c. 510; SCR Decr. *Sancitum est*, 8 mar. 1922 (*AAS* 14 [1922] 161–163); SCR Instr. *Doceatur quae decreta*, 25 mar. 1922 (*AAS* 14 [1922] 278–286); SCR Decr. *Cum, transactis*, 9 iul. 1947 (*AAS* 40 [1948] 378–381); SCR Normae, 9 dec. 1948
§ 2: c. 509 § 1; *LG* 25; *MR* 29, 33

CROSS REFERENCES: cc. 399, 704

COMMENTARY

Tomás Rincón-Pérez

Communion with the Apostolic See

One could hardly fully live the ecclesial communion if channels of communication did not exist between the institutes and the Apostolic See. To foster and reinforce that communion, c. 592 provides two measures: the account that the supreme moderator must send periodically to the Holy See, and the duty of all the moderators to make known to their subjects the documents of the Holy See that affect them, as well as to make sure that the documents are observed. We will analyze both measures separately.

1. *The periodic account*

The account or brief report that c. 592 § 1 prescribes has a certain similarity to the quinquennial report that the diocesan bishop must present to the Roman Pontiff regarding the situation of his diocese pursuant to the provisions of c. 399. Until now it has been called *quinquennial report* because that was the ordinarily prescribed period in c. 510 of the *CIC*/1917.[1] This canon of the prior code was developed afterwards by the Decree *Sancitum est* of March 8, 1922.[2] After the promulgation of *PME* regarding the secular institutes, a new Decree of the SCR, the *Cum transactis* of July 9, 1947,[3] brought the procedure current, and in view of the different kinds of institutes, it proposed three different kinds of questionnaires.

Canon 510 *CIC*/1917, with its subsequent normative developments, as amended, was in effect until 1967. It is well known that to promote the renewal and adaptation of the constitutions to the instructions of Vatican Council II, *Ecclesiae Sanctae* II, 3–9 ordered all the institutes to meet in a special chapter. Keeping in mind those works of revision in process, the SCRSI, in a letter dated March 1, 1967 and directed to the President of the Roman Union of General Superiors,[4] deemed it necessary to suspend temporarily the sending of the quinquennial account, and at the same time it proceeded to draft a new questionnaire.

Canon 592 § 1 reestablishes the duty of sending the Apostolic See a brief report of the state and life of the institute, but according to the way and timing determined by the Holy See itself. This determination did not take place until 1988, when the CICLSAL sent one letter to the religious institutes and the societies of apostolic life and another to the secular institutes.[5] Therefore, those who are obliged to send the report are all the ICLs, that is, the religious institutes and the secular institutes, whether of pontifical or diocesan right, as well as the SALs. The federations and confederations are not included.

With respect to the *persons responsible* for sending the account, c. 592 § 1 simply mentions the supreme moderator without requiring the signatures of the members of the council as was previously required (cf. c. 510 *CIC*/1917). Regarding a congregation of women, there is no additional requirement that the local ordinary of where the general superior resides with her council sign the account. It was indicated in the Letters of

1. Cf. A. LARRAONA, "De relatione quinquenale S. Sedi mittenda," in *Commentarium Pro Religiosis*, 8 (1927), pp. 275–285.
2. *AAS* 14 (1922), pp. 161–163.
3. *AAS* 40 (1948), pp. 378–381.
4. X. OCHOA, *Leges Ecclesiae*, III, Rome 1972, col. 5111. Cf. G. DE CARLO, "Le relazioni Quinquennali. Uno strumento di communione degli istituti di vita consacrata con la Sede Apostolica (c. 592 §1)," in *Commentarium Pro Religiosis* 70 (1989), p. 55.
5. *AAS* 80 (1988), pp. 104–107.

1988 that the account can be the same one proposed by the general chapter, put into short form, which presupposes that it will not be drafted by only the supreme Moderator, but will be the fruit of a collegial work. Nevertheless, there is no formal requirement that the council members sign it.[6]

With respect to the *time* that it must be sent, instead of every five years, the norm is now every six years. Thus, the Holy See has intended to adopt the practice of holding the chapters or general assemblies every six years. Where those chapters or assemblies are not being held according to the common practice, the account will have to be sent in any case when a six-year period has elapsed.

Finally, regarding the *subject* that the account must contain, the canon speaks generically of "a brief account of the state and life of the institute." The documents of 1988 did not want to present a detailed questionnaire, but only some general criteria that would serve as a guide for the drafting of the report.[7] In any case, pursuant to c. 704, it must be indicated in the report the members who have been separated from the institute for any reason, that is, whether by indult of leaving the institute or by expulsion in accordance with the causes and procedures established in cc. 694–701.

2. *Knowledge and observance of the documents of the Holy See*

This is a second means to promote ecclesial communion. It is not enough that the Holy See know the state and life of the institutes; it is necessary further that the consecrated know and comply with regulations issued by the Holy See.

The former code (c. 509) also undertook to regulate this subject with a criterion apparently more detailed but in reality more restrictive than § 2 of c. 592. The use of the term "documents of the Holy See" in place of "decrees" means that it not only dealt with the superiors' promoting the knowledge of the documents that had a normative character, but of any other, including those of a doctrinal character. It is as equally important today to know and live the pontifical teaching as it is to know and observe the canonical regulations issued by the Apostolic See.

The obligation to promote that knowledge of the documents of the Holy See and to urge their observance affects the superiors ("moderators," says the canon, because they also refer to the secular institutes) on all levels, that is, to the general superior for the entire institute, to the provincial moderator for the province, and to the local superior for the community it-

6. Cf. G. DE CARLO, "Le relazioni Quinquennali...," cit., p. 60.
7. Cf. *AAS* 80 (1988), pp. 104–107.

self. Regarding procedures in this respect, it is up to each institute to establish them, for example, through internal bulletins or circulars, or through specific talks or catecheses, adapted to the particular formative levels of each institute.

There is no norm regarding documents of the bishops or of the Conferences of Bishops. But it is obvious that the superior must also make sure the consecrated know the diocesan directives since their pastoral and apostolic actions, without diminishing their universal dimension, are realized and take shape in the sphere of the particular churches.

593 **Firmo praescripto can. 586, instituta iuris pontificii quoad regimen internum et disciplinam immediate et exclusive potestati Sedis Apostolicae subiciuntur.**

In their internal governance and discipline, institutes of pontifical right are subject directly and exclusively to the authority of the Apostolic See, without prejudice to can. 586.

SOURCES: c. 618 § 2

CROSS REFERENCES: cc. 586, 589

COMMENTARY

Tomás Rincón-Pérez

Power over institutes of pontifical right

Neither canonical exemption nor being or belonging to an institute of pontifical or diocesan right are circumstances that annul the condition of being ecclesiastical institutes or the condition of the members being part of the faithful. Based on that condition, it is easy to conclude that the institutes, inasmuch as they are juridical persons, as well as each one of their members, are subject to the hierarchical powers of the Church. That means that the Apostolic See, through its multiple organs, exercises external power over external governance in all cases.

What c. 593 determines, consequently, is external power over the internal governance and discipline of the institute. Regarding the institutes of pontifical right, it is the Apostolic See that exercises immediate and exclusive power, without diminishing the autonomy enjoyed by all the institutes pursuant to c. 986. That autonomy, applicable to all the institutes (see commentary on c. 591), is not absolute, for it is limited by the power of the Apostolic See; but at the same time, this power of the Apostolic See is limited by autonomy.

By virtue of the ample distribution of competence effected by *Pastor Bonus*, that external power over internal governance is ordinarily exercised through the CICLSAL. The only exception to its competence is the regulation of the study of philosophy and theology and academic studies. The CCE has competence in those matters (cf. *PB* 108 § 2).

The eremitic life, the order of virgins and its associations, and the remaining forms of consecrated life are also subject to the CICLSAL (*PB* 110).

Presently, there are no forms other than those described in the Code, but there could be in the future (cf. 605).

The competence of this congregation is also extended to the third orders (c. 303) and to the associations of the faithful that are erected with the purpose of being converted one day into ICLs or SALs, after prior preparation (*PB* 111).

In any case, the jurisdiction that the law attributes to this congregation ordinarily is administrative. It could make laws through express delegation by the Roman Pontiff (cf. 30), issue decrees with the force of law in singular cases and by means of specific approval of the Supreme Pontiff (cf. *PB* 18), in which case such activity would have pontifical authority. From the normative point of view, the general practice is to issue executory decrees (c. 31) or instructions (c. 34). Under this activity falls a multitude of singular juridical-administrative acts like the erection and approval or suppression of institutes, or the constitution of unions or federations and their dissolution, the approval of constitutions, the dispensation of vows, the confirmation of the decree of expulsion, etc. Finally, it is the instance of last resort in hierarchical appeals, but in no case does it have judicial power. In clerical religious institutes of pontifical right, it, or rather the provincial superior or local abbot, or the superior general or superior abbot of a monastic congregation, is the judge of the first instance. These can also constitute tribunals of second instance (cf. cc. 1427 and 1438 § 3). In controversies involving the remaining institutes, including the *lay* institutes of pontifical right, the tribunal of first instance is the diocesan tribunal (cf. 1427 § 3).

594 **Institutum iuris dioecesani, firmo can. 586, permanet sub speciali cura Episcopi dioecesani.**

An institute of diocesan right remains under the special care of the diocesan bishop, without prejudice to can. 586.

SOURCES: c. 492 § 2

CROSS REFERENCES: cc. 589, 595

COMMENTARY

Tomás Rincón-Pérez

Institutes of diocesan right: their dependence on the bishop

The literal tenor of this canon is quite different from that of the preceding canon. The institutes of pontifical right depend immediately and exclusively on the power the Apostolic See. In contrast, the institutes of diocesan right, those that have been erected by the bishop and still have not received the formal decree of approval by the Holy See, apart from also enjoying a true internal autonomy, are only under the special care of the diocesan bishop.

This attenuation of jurisdictional dependence becomes clear if we contrast the present norm with the norm of c. 492 § 2 of the *CIC*/1917, according to which a congregation of diocesan right remained completely subject to the jurisdiction of the ordinaries pursuant to law.

In all cases, the special care to which the canon refers must not be understood as a mere pastoral courtesy; but it implies special juridical competence over the institutes of diocesan right, not only as public entities based in the respective diocese, but also for the purposes of their internal governance. In any case, it is a matter of external power that must not be confused with the internal power belonging to the superiors. The bishop is not a *superior* in the proper sense of the word, as is the Roman Pontiff (cf. c. 590 § 2).

Among the many manifestations in which that special care implies the exercise of true juridical competency, it is appropriate to summarize here some instances of that competency with reference to the religious institutes:

The bishop of the principal seat presides over the election of the general superior of an institute of diocesan right (c. 625 § 2).

The diocesan bishop has the right and duty of visitation, also because of what is referred to as religious discipline, of all the houses of an institute of diocesan right that are inside his territory (c. 628 § 2, 2°).

The local ordinary has the right to know the economic situation of a religious house of diocesan right (c. 637).

For the validity of an alienation, in addition to the requirements established by c. 638, the institutes of diocesan right also need to obtain the written consent of the local ordinary (c. 638 § 4).

The extension or granting of more than three years for an indult of exclaustration is reserved to the bishop when it deals with an institute of diocesan right (c. 686 § 1). Likewise, in cases of a religious of an institute of diocesan right, exclaustration can be imposed by the diocesan bishop (c. 686 § 3).

To be valid, the indult of leaving an institute of diocesan right during temporary profession, in cases of the institutes of diocesan right, must be confirmed by the bishop of the house to which the religious is assigned (c. 688 § 2). The indult of leaving for one professed in perpetual vows, in cases of institutes of diocesan right, may also be granted by the bishop of the diocese where the house to which the religious belongs is located (c. 691 § 2).

Finally, when the decree of expulsion affects a religious of an institute of diocesan right, to be effective, it must be confirmed by the bishop of the diocese where the house to which the religious is assigned is situated (c. 700).

595 **§ 1. Episcopi sedis principis est constitutiones approbare et immutationes in eas legitime introductas confirmare, salvis iis in quibus Apostolica Sedes manus apposuerit, necnon negotia maiora totum institutum respicientia tractare, quae potestatem internae auctoritatis superent, consultis tamen ceteris Episcopis dioecesanis, si institutum ad plures dioeceses propagatum fuerit.**

§ 2. Episcopus dioecesanus potest dispensationes a constitutionibus concedere in casibus particularibus.

§ 1. It is the bishop of the principal house who approves the constitutions, and confirms any changes lawfully introduced into them, except for those matters which the Apostolic See has taken in hand. He also deals with major affairs which exceed the power of the internal authority of the institute. If the institute had spread to other dioceses, he is in all these matters to consult with the other diocesan Bishops concerned.

§ 2. The diocesan bishop can grant a dispensation from the constitutions in particular cases.

SOURCES: § 1: cc. 492 § 1, 495 § 2
§ 2: CodCom Resp. III: II, 12 feb. 1935 (*AAS* 27 [1935] 93)

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

Institutes of diocesan right: approval and dispensation from the constitutions

Many of the competences conferred by law upon the diocesan bishop (see commentary on c. 594) pertain to the bishop of the diocese where the house to which the religious is assigned is located. This is logical because the bishop of the general house, or of the principal see, has particular competence over the institute of diocesan right, for its being such, but not over each one of the houses and persons of the institute when the institute has expanded into other dioceses.

A sample of that particular competence is conferred on the bishop by c. 595. It is the prerogative of the bishop of the principal see, in effect,

to approve the constitutions and to confirm amendments lawfully introduced into them, except in those cases that the Apostolic See has taken in hand.

In a way, this exception is a specific application of the principle that inspires the norm established in c. 583. But it is not identified with it, for in one case it is a question of not introducing modifications that affect *what has already been approved* by the Apostolic See, while the exception of c. 595 goes beyond what was approved: it is sufficient that the Apostolic See has intervened in the matter.

The bishop of the principal house also has competence to deal with causes or very important matters that refer to the entire institute and that transcend the power of internal authority. But in this case, the bishop of the principal house must consult with the rest of the diocesan bishops if the institute has expanded into several dioceses. One must not forget that, although there might be numerous dioceses where the institute is established, the institute continues being of diocesan right as long as it has not received the formal decree of approval by the Apostolic See (c. 589).

It will not be easy to judge in practice when the matters at hand exceed or transcend the power of internal authority. But it is one more example why the legislator wants always to safeguard the internal autonomy of the institutes. No matter how grave the situation, if the internal superior of the institute has power over it, the competence of the bishop disappears, for it is tied to the circumstance that the matter remains outside of internal power.

Pursuant to § 2, the diocesan bishop can grant dispensation from the constitutions in particular cases. The norm does not determine to which diocesan bishop the matter is referred in the case of the institute that is spread out into several dioceses but, by analogy to other situations (e.g., the indult of leaving the institute: c. 691 § 2; or the confirmation of the decree of expulsion: c. 700), it seems logical to think that it should be the bishop of the diocese of the house interested in the dispensation, or the house to which the member who requested the dispensation is assigned.[1]

Finally, it is important to remember that this entire subject matter has suffered a notable disciplinary change with respect to the former code. According to c. 495 § 1 of the *CIC*/1917, a religious congregation of diocesan right could not found houses in other dioceses without the consent of both ordinaries: the ordinary of the principal house and the ordinary of the diocese of the new house. Nowadays, to erect a religious house, no matter the nature of the institute, only the written consent of the diocesan bishop where the house is situated is needed (cf. c. 609).

1. Cf. E. GAMBARI, *I religiosi nel codice. Commento ai singoli canoni* (Milan 1986), p. 76.

Regarding the legislative changes, meaning the proper law, the former c. 495 also required the consent of all the ordinaries in whose dioceses there were houses of the institute. We have already seen that the current c. 595 § 1 attributes competence to the bishop of the principal see, not to introduce amendments into the constitutions, but rather to confirm those that have been introduced lawfully into them, in accordance with the general principle established in c. 587 § 2. It is debatable if a consultation with the other bishops is required in this case. By the literal tenor of the norm, it seems more likely that consultation would only be required in very important matters.

596 **§ 1. Institutorum Superiores et capitula in sodales ea gaudent potestate, quae iure universali et constitutionibus definitur.**

§ 2. In institutis autem religionis clericalibus iuris pontificii pollent insuper potestate ecclesiastica regiminis pro foro tam externo quam interno.

§ 3. Potestati de qua in §1 applicantur praescripta cann. 131, 133 et 137–144.

§ 1. Superiors and chapters of institutes have that authority over the members which is defined in the universal law and in the constitutions.

§ 2. In clerical religious institutes of pontifical right, they have in addition the ecclesiastical power of governance, for both the external and the internal forum.

§ 3. The provisions of cann. 131, 133 and 137–144 apply to the authority mentioned in §1.

SOURCES: § 1: c. 501 § 1; SCRSI Decr. *Experimenta*, 2 feb. 1972, 1 (*AAS* 64 [1972] 393)
§ 2: cc. 501 § 1, 503
§ 3: CodCom ReSP. VI, 26 mar. 1952 (*AAS* 44 [1952] 497)

CROSS REFERENCES: cc. 134, 617–618, 631

COMMENTARY

Tomás Rincón-Pérez

Governance of the institutes

1. *Personal and collegial governance*

As in the previous legislation (cf. c. 501 *CIC*/1917), there are two kinds of internal governance in the institutes: personal and collegial. The former is exercised through the personal authority of the superiors, who decide and are responsible for the actions of the institute, notwithstanding that there are numerous occasions when they must act with the consultative or deliberative vote of their councils. In the universal law (Code),

there is only one occasion when collegial action by the superior and the council is called for (cf. c. 699).

Collegial governance is exercised through the chapters, which is the representative organ of the entire institute, in the case of the general chapter, the chapter of a province, in the case of the provincial chapter, and the chapter of a specific community, in the case of the local chapter. In any case, an action taken collegially is attributed to the college and responsibility for it is joint and several among the members of the college.

"From the beginning of the religious state, governance was almost exclusively collegial. The authority of the eremitic group lay in the elders who constituted a kind of monastic senate entrusted with keeping watch over the observance and, in general, over the welfare of the hermits. But soon this system gave way to governance by the abbot, which though strongly monarchistic, nevertheless, did not alienate the religious the abbot had to resort constantly to the council of elders and to the brethren.

"The *chapter* appeared with the 'Charta Caritatis' given to the Cistercians in 1119, and it was endowed with true collegial and supreme powers. Later, among the mendicants, collegiality, without being absolute, was present in everything. In the 16th century the Company of Jesus adopted monarchical structures centrally and hierarchically organized, even though the authority of the superiors would be controlled by a collegial general assembly. This system has been imitated by the modern congregations ..."[1]

In the former canonical system, the personal form of governance prevailed notably, at least among modern institutes, to the point where, according to present canonical jurisprudence, outside of the mendicant orders, collegiality appear only as an exception and only at a *general* level and thus, the *provincial* and *general chapters* were being reduced to purely electoral colleges or as having a consultative function at most.[2]

It was the wish of Vatican Council II (*PC* 14) that the principles of representation and participation of all the religious in the governance of the institute be emphasized, while the personal authority of the superiors was always to be preserved. Therefore, in 1972 the SCRSI answered in the negative the question of whether an exclusive and ordinary collegial system of governance could be allowed in the face of the then-in-effect c. 516: "In accordance with the thinking of Vatican Council II (*PC* 14) and the Exhortation of the Pope, 'Evangelica Testificatio,' no. 25, while respecting the lawful consultations and the limits imposed by the common and particular law, the superiors must have personal authority."[3]

1. G. ESCUDERO, *El nuevo derecho de los religiosos* (Madrid 1975), p. 91.
2. Cf. ibid., p. 90.
3. Decr. *Experimenta*, February 2, 1972, in *AAS* 64 (1972), pp. 393–394.

The desire of the Council regarding a greater representation and participation of all the members in the governance of the institute had been elevated to a rank of a directive principle for the revision of religious law. In the preliminary notes of the *schema* that had been sent to the consulting organs, it was made clear, nevertheless, that it fell to the universal law to arbitrate the juridical or normative means necessary to prevent and avoid the abuses that could occur if the principle of authority were not preserved.[4]

Canon 618 constitutes an example taken literally from *Perfectae caritatis* 14, where the wishes of the Council were emphasized with respect to a greater participation and co-responsibility by all in the attainment of the common good of the institutes, as well as to its wishes regarding responsible and voluntary obedience, while maintaining the authority of the superior to decide and implement what must be done.

All in all, one can conclude that nowadays both forms of governance (personal and collegial) are complementary and neither of them can be exercised alone to the exclusion of the other. Further on, regarding the governance of the religious institutes, the canons state in more detail both the nature and functions entrusted to the chapters and to the superiors and their councils (cf. cc. 617–630 regarding superiors and councils, 631–633 regarding chapters).

2. *Nature of the power of governance in institutes of consecrated life*

In contrast to c. 501 § 1 of the *CIC*/1917 which expressly denominated *dominative* power, c. 596 § 1 is limited to saying that both the superiors and the chapter enjoy the power that is determined by universal law and the constitutions.

In effect, the classical denomination of *dominative* power disappears from the legislative text, perhaps for its not having responded fully to its true character, since the power of all the institutes is derived from ecclesiastical power, although it is not called power of governance or of jurisdiction in the strict sense. Considering that such power is possessed by all the institutes, (§ 1) is contrasted with the ecclesiastical power of governance possessed by the rest of the clerical religious institutes of pontifical right (§ 2). The legislator did not wish to be more specific on the "nature" of that power, and has limited himself to giving practical norms by virtue of which the exercise of that power—whatever its nature and denomination—is governed by the same precepts—as is the power of executive governance (§ 3).

4. Cf. *Comm.* 9 (1977), pp. 53–61.

Once the name and concept of dominative power have disappeared, which had been applied to religious life since ancient times, and in view of the fact that the law does not define it, but rather contrasts it in principle with the power of governance, it will not be easy to investigate the true nature of the doctrine and to discover the most appropriate denomination to define it.

The question is not new. In regards to c. 501 of the *CIC*/1917, from the beginning the doctrine had been evolving toward a concept of dominative power different from its original meaning, when the religious associations lacked public approval and organization in the Church, that is, when they had a private character. Because the power of the superiors originated immediately from the will (agreement) of the subjects, it was appropriately called dominative power.

But afterwards, the congregations became public organizations because the power by which they had been governed had not come from private will, but from the law itself, which had preexisted the will of the subjects.[5]

In this sense, for example, A. Larraona argued from very early on that given the public character of the religious congregations, the dominative power described in the Code of 1917 could in some way now be considered a species within the genre of private or domestic dominative power. But because it had dealt with a power or a public nature and to such a point of becoming similar to jurisdiction, which well could have been called *inchoate jurisdiction*, it had been appropriate to apply, with due specificity, the norms in effect pertaining to power of jurisdiction.[6]

Other authors will call it *semipublic* power, for its publicity's being considered functional rather than essential.[7] Still, there will be others, who, upon commenting on the Response of the CPI of March 1952[8] and applying the dominative power of the religious to many of the precepts of the power of executive governance, will go further and consider it true and proper jurisdiction, though *partial*, for its covering only executive matters.[9]

On the eve of the promulgation of the *CIC*, J.L. Gutiérrez, for example, argued this very thesis; that is, he would consider the so-called dominative power true jurisdiction granted by the ecclesiastical authority and

5. Cf. A. GUTIÉRREZ, "Commentarium in rescriptum Pontificium 'cum admotae'," in *Commentarium Pro Religiosis* 44 (1965), p. 217 note 61.

6. Cf. A. LARRAONA, "De potestate dominativa publica in iure canonico," in *Acta Congressus Iuridici Internationalis*, vol. IV (Rome 1937), pp. 147–180.

7. Cf. M. CABREROS DE ANTA, "La potestad dominativa y su ejercicio," in *La Potestad en la Iglesia* (Barcelona 1960), pp. 68–71.

8. *AAS* 44 (1952) p. 497.

9. Cf. J.B. FUENTES, "De potestate dominativa in religionibus non exemptis," in *Commentarium Pro Religiosis* 32 (1953), p. 203.

not a *tertium quid*, unknown in the canonical order. For this reason, the general norm that the law establishes for jurisdiction must be applied to that power, not by analogy, but by virtue of its intrinsic nature.[10]

Once the Code was promulgated, the commentators were unanimous in affirming the public character of the power dealt with in c. 596 § 1. That is the reason why the legislator refused to call it "dominative." But while some defended their thesis that configured that power as the true power of governance or of jurisdiction, others, in contrast, were more measured in the assessment of its nature.

Among the first positions, the one adopted by A. Gutiérrez was remarkable. For this author, c. 596 apparently denied the jurisdictional character of the formerly so-called dominative power, upon comparing it with the power described in § 2. Still, in the Code there was no obstacle for the power that c. 596 §1 granted to all the superiors, including lay superiors, to be recognized as having the jurisdiction or power of ecclesiastical governance. The public nature of the ICLs is unquestionable, argues the mentioned author, because the superiors received their power *per ministerium Ecclesiae* (c. 618). Therefore, the immediate source of that power was the Roman Pontiff, through the universal law or through the constitutions approved by him, and not the vow of obedience or the agreement between the institute and each of its members. But the Church could confer or communicate nothing other than the power it had, that is, the power of governance or of jurisdiction, although, in the present case, it was a matter only of the power of *executive* governance, and not of legislative, judicial, and penal power.[11]

E. Gambari, without denying the public and ecclesiastical nature of the power enjoyed by the superiors and chapters of all the institutes, nevertheless warned of the necessity of not confusing it with the power of governance or of jurisdiction. It proceeded more along the lines of analogy than identity.[12]

For his part, D.J. Andrés also distinguished the different origins of both powers (that of §§ 1 and 2) and consequently, their diverse natures. The formerly so-called *dominative* "is defined as domestic, government, economic, or socio-community power ..., that makes incumbent upon every religious superior to govern subjects according to the end of each institute, province, or house. It has the dual origin of the nature of the institutes and that of the agreement of the members to subjection, assumed with the profession of the vow of obedience." The other power, which is

10. Cf. J.L. GUTIÉRREZ, "Dalla potestà dominativa alla giurisdizione (Appunti per uno studio)," in *Ephemerides Iuris Canonici* 39 (1983), pp. 74ff.

11. Cf. A. GUTIÉRREZ, "Canones circa IVC et SVA vagantes extra partem eorum propriam," in *Commentarium Pro Religiosis* 64 (1983), p. 89.

12. E. GAMBARI, *I Religiosi nel Codice*, (Milan 1986), p. 78. Idem, *Vita religiosa secondo il Concilio e il nuovo diritto canonico*, 2nd ed. (Rome 1985), p. 515.

possessed only by the clerical religious institutes of pontifical right, "was defined as public ecclesiastical power of jurisdiction that existed in the Church by divine institution ... to direct subjects toward the supernatural end of the Church and to the specific end of the IVCR. It had the dual origin of the divine institution and that of sacred orders, which made possible the existence the [of] such power, besides the specifically aforesaid origin for common power."[13]

In the work of revision,[14] it came to be proposed that the power dealt with in c. 596 § 1 should be called *ecclesiastical*. But that proposal was rejected because it was the equivalent of defining that power as hierarchical or of governance and it was not appropriate that the law delve into the heart of the nature of that power. The question, therefore, remained open to multiple interpretations, as we have just seen.

It has been argued that, if it is public power, and there seems to be unanimity in this respect, and granted by the Church itself, it cannot have a nature other than the power of governance, for that is the only power that is communicable by the Church since, as it has been said, a *tertium quid* does not exist. But perhaps that is what must be demonstrated: the nonexistence of a *tertium quid*. Just as the normative power is expressed in different ways (laws, legislative decrees, executory decrees, instructions, statutory norms, etc.), nothing hinders the *public* power in the Church from also having different manifestations: power of governance, properly speaking and closely connected to the sacrament of holy orders; the public power of an associative nature, to which is applied by way of analogy or by comparison *in iure*, other norms established for the power of jurisdiction, as c. 596 § 3 does.

The question was debated whether the religious or consecrated associations, but with due reservations, might be transferred easily to the sphere of all the public associations, erected by ecclesiastical authority, endowed with a power of self-governance and with a mission to act in the name of the Church, in so far as the ends of the association required it and only within that scope (cf. c. 313). Therefore, a *public* power could be spoken of, which sometimes might have the nature of true jurisdiction, and of other powers, which, in contrast, only have an associative character, inasmuch as their purpose is the governance of the faithful who voluntarily attach themselves to said association, in the case of the religious through religious profession and the taking of sacred vows, including that of obedience.

13. *El derecho de los religiosos. Comentario al Código*, 2nd ed. (Madrid 1984), p. 36.
14. Cf. *Comm.* 11 (1979), p. 306.

3. *The power of governance or of jurisdiction*

Another of the innovations of c. 596 is the increase in the scope of institutes that enjoy ecclesiastical power of governance, both for external and internal jurisdiction. Formerly, only the *exempt* ecclesial religions enjoyed said ecclesiastical jurisdiction, by which their major superiors were configured as *ordinaries*. Now all the clerical religious institutes of pontifical right enjoy that power of governance, also called power of jurisdiction (c. 129), by which their major superiors are also called *ordinaries* (c. 134). Someone has called it a change "almost revolutionary,"[15] but it is nothing other than the result of the scarce or nonexistent relevance that *exemption* has today.

The equality among all the clerical religious institutes of pontifical right (exempt or not) had already been noticeable in the Rescript *Cum admotae* of November 6, 1964,[16] in which certain faculties were delegated to the general superiors of the clerical religions of pontifical right, delegated faculties that now are converted into ordinary faculties, since enjoying *a iure* the ecclesiastical power of governance, and are expanded to all the major superiors (c. 134 § 1).

For its part, the Decree *Religionum laicalium* of May 31, 1966[17] expanded the delegation of many of these faculties to the supreme moderators of the lay religious institutes of pontifical right. The Decree *Cum Superiores*[18] of November 27, 1969 even granted to those supreme moderators the delegated faculty of granting the departure from the institute to religious in temporary vows. In contrast to the clerical institutes, the lay religious institutes, who had acquired those faculties by way of delegation, did not acquire ordinary power of governance pursuant to c. 596. Neither did the secular institutes acquire it because of this precept, whether or not they were clerical and of pontifical right.

With respect to these last institutes, the greatest difficulty was based on how to configure the institutes that had the faculty granted by the Apostolic See to incardinate clerics in the institute itself (c. 266 § 3), because it seemed obvious that the superiors of the secular institutes with the faculty to incardinate possessed at the same time the ecclesiastical power of governance. The question had not passed unnoticed in the first *schemata* of revision, which had given a broader formulation to c. 596.[19] The ultimate solution to the problem could have been that even if the clerical secular institutes and of pontifical right had not possessed in principle

15. D.J. ANDRÉS, *El derecho…*, cit., p. 36.
16. *AAS* 59 (1967), pp. 374–378.
17. *AAS* 59 (1967), pp. 362–364.
18. *AAS* 61 (1969), pp. 738–739.
19. Cf. *Comm.* 11 (1979), pp. 305–308.

ecclesiastical power of governance, they could have, nevertheless, obtained it in the same act of granting the faculty to incardinate.

Although not ICLs in the strict sense, the clerical SALs of pontifical right also enjoy power of governance pursuant to c. 732; and their superiors, consequently, receive the name of *ordinaries* (c. 134). The probable reason that this treatment differs from the one given to the secular institutes lies in the fact that, as a general rule, these clerical societies of apostolic life may incardinate clerics by virtue of the provisions of c. 736 (cf. also c. 266 § 2).

597 **§ 1. In vitae consecratae institutum admitti potest quilibet catholicus, recta intentione praeditus, qui qualitates habeat iure universali et proprio requisitas nulloque detineatur impedimento.**

§ 2. Nemo admitti potest sine congrua praeparatione.

§ 1. Every catholic with a right intention and the qualities required by universal law and the institute's own law, and who is without impediment, may be admitted to an institute of consecrated life.

§ 2. No one may be admitted without suitable preparation.

SOURCES: § 1: c. 538; *SS* II; *OT* 3; *RC* 4, 10: II
§ 2: *RC* 4, 11: I

CROSS REFERENCES: cc. 642, 721

COMMENTARY

Tomás Rincón-Pérez

Admission to an institute of consecrated life

This canon establishes generically and as basic principles the required conditions for being admitted to an ICL as well as stating the necessity for a suitable preparation.

1. *Required conditions*

The present norm is applicable to all the ICLs, whether religious or secular, whether religious of entirely contemplative life or of active apostolate, whether clerical or religious. This is the reason why the established conditions have a very general character. Further on, when the Code refers to each of the two forms of consecrated life, the requirements and qualifications that must be possessed by those who are called to form a part of an institute will be specified in detail (cf. 642 and 721). Moreover, the vocation to the religious life or to the secular consecrated life is not an abstract vocation but one that is specified in a certain institute with its own particular characteristics, which is the reason why it is the prerogative of the proper law to add to the general qualifications other specific qualifications that speak to the nature and end of each institute.

In any case, the following conditions must be met to be admitted to any ICL:

a) Be a faithful Christian pursuant to c. 204 and a faithful Catholic according to the provisions of c. 205, that is, be in full communion with the Catholic Church through the triple bond of faith, sacraments, and union with the Hierarchy.

b) Have the right intention and sincere desire to embrace and live with all the consequences of that particular form of Christian life.

c) Possess the qualities required by the universal law and the institute's own law. In the work of revision the idea had been noted that through those required qualities "vocatio divina, a legitima auctoritate recognita, comprobatur."[1] But it was preferred to suppress said phrase to avoid controversial theological questions and as well as practical questions of governance. In any case, knowledge of the divine vocation is one of the goals of the novitiate (c. 646); its discernment and proving is one of the tasks entrusted to the director of novices (c. 652). In the secular institutes the initial probationary period also must foster the candidates' deeper knowledge of their divine vocation and that of the institute itself.

d) Be free of the impediments as stated in c. 643 for the religious institutes and those in c. 721 for the secular institutes, as well as those that the proper law can establish.

2. *Suitable preparation*

Founded upon an irrevocable vocation, every incorporation into an institute is fundamentally perpetual or definitive, but this does not stop the Church from establishing successive stages of preparation, beginning with the novitiate in the religious institutes, or with the so-called initial probationary period in the secular institutes, followed by profession or temporary incorporation; and even afterwards establishing the necessity of permanent formation for religious (cc. 659–661) as well as for secular consecrated (c. 724).

But § 2 of c. 597 refers to the necessity of a suitable preparation before being admitted, not only for religious profession but also for the novitiate itself or initial probationary period in the secular institutes.

In the Instruction *Renovationis causam* special importance was given to this preparation prior to the novitiate, on stating the advisability "of having a sufficiently long probationary period precede admission to the novitiate." The requirement of this prior stage, called postulancy, was expressly regulated in cc. 539–541 of the *CIC*/1917. Such figure disap-

1. *Comm.* 11 (1979), pp. 308–309.

pears, however, from the present Code and only becomes in § 2 a basic norm to be subsequently developed.

This development has been provided in the Instruction *Potissimum Institutioni*, February 2, 1990, and carries as its title "Guidance on Formation in the Religious Institutes."[2]

This Instruction, meant only for the religious institutes, in no. 42 is thus based on the need for a stage prior to entering the novitiate: "In the present circumstances one can say generally that the diagnosis of the *Renovationis Causam* is still completely true for today: 'the major part of the difficulties found in our time in the formation of the novices come from the fact that when they are admitted to the novitiate they do not possess the *minimum* necessary maturity.' Certainly a candidate for the religious life is not asked to be capable of immediately assuming all the obligations of religious, but he must be judged capable of progressively doing so. To be able to evaluate that capacity justifies their being provided the time and means to do so. Such is the purpose of the preparatory stage to the novitiate, whatever its name: postulancy, pre-novitiate, etc. It is uniquely the prerogative of the proper law of the institutes to specify how this will be carried out, but in any case, 'no one may be admitted without suitable preparation' (c. 597 § 2)."

Next the document provides the basic content of this preparatory stage, "which one should not be afraid to prolong," as well as the methods to carrying them out: "These methods can be various: the candidate may be welcomed into a community of the institute without, nevertheless, having to stay forever, except in the community of the novitiate where it is advisable, unless it is a question of cloistered nuns; the candidate may have periodic contact with the institute or one of its representatives; he may participate in common life in a house set up to welcome candidates, etc. But none of these forms must be thought of as having already converted the interested parties into members of the institute. Anyway, personal attention paid to the candidates (male and female) is more important than the structures established to welcome them" (n. 44).

2. *AAS* 82 (1990), pp. 472–532.

598 **§ 1. Unumquodque institutum, attentis indole et finibus propriis, in suis constitutionibus definiat modum quo consilia evangelica castitatis, paupertatis et oboedientiae, pro sua vivendi ratione, servanda sunt.**

§ 2. Sodales vero omnes debent non solum consilia evangelica fideliter integreque servare, sed etiam secundum ius proprium instituti vitam componere atque ita ad perfectionem sui status contendere.

§ 1. Each institute, taking account of its own special character and purposes, is to define in its constitutions the manner in which the evangelical counsels of chastity, poverty and obedience are to be observed in its way of life.

§ 2. All members must not only observe the evangelical counsels faithfully and fully, but also direct their lives according to the institute's own law, and so strive for the perfection of their state.

SOURCES: § 1: *PC* 12–14
§ 2: c. 593; *SS* III; *LG* 42, 43, 47; *PC* 2b

CROSS REFERENCES: cc. 573, 587

COMMENTARY

Tomás Rincón-Pérez

Observance of the evangelical counsels and of the institute's proper law

1. *Observance of the evangelical counsels: their constitutional determination*

An essential element for all the ICLs is the public assumption by their members of the evangelical counsels of chastity, poverty, and obedience; and also the search for perfection through this particular and stable form of life. The specific ways of professing or practicing those counsels, nevertheless, are different as are the specific obligations that flow from those commitments. Hence, it is necessary that each institute, in view of its own identity, determine in its constitutions its own way of observing those evangelical counsels.

The norm of c. 598 that establishes this requirement is common to all the ICLs and therefore, it is applicable to the religious institutes and to the secular institutes. Thus, the first determination in the manner of observing the evangelical counsels consists in establishing if the counsels are assumed through vows or through other sacred bonds. In the religious institutes it is clear in this respect that the determination is given by the universal law: there is no other religious profession including temporary profession, than one realized through vows. The Code has repealed the norm of *Renovationis causam* that permitted the general chapters to substitute temporary vows for bonds of another kind. Canon 654 likewise determines it that way in conformance with c. 607.

In the secular institutes, on the other hand, there will have to be constitutions that establish the sacred bonds for those who embrace the evangelical counsels in each institute. Canon 712 does not discard the possibility that, in each specific secular institute, the constitutions could establish the vow as the sacred bond by which the evangelical counsels are embraced. The constitutions will determine also the obligations that flow from those bonds, whatever their nature, without diminishing, in the case of the secular institutes, the secularity that is proper to them.

Supposing profession through vows, and without diminishing the generic obligation of fully living the three evangelical counsels, the constitutions also in the religious institutes have to determine the purpose and content of the sacred bonds to set down as much as it possible the scope and reach of the obligations that are assumed. In this way the charismatic identity of the institute is determined, since each institute's own way of living the evangelical counsels will be designed into its fundamental code.

Living the evangelical counsels through public vows within an institute is the first and most radical modality that distinguishes religious life from Christian life in general. Every disciple of Christ is called to the radicalism that the evangelical counsels express: "This vocation to perfect love is not restricted to a small group of individuals. The *invitation* 'go, sell your possessions and give the money to the poor', and the promise 'you will have treasure in heaven', *are meant for everyone*, because they bring out the full meaning of the commandment of love for neighbor, just as the invitation which follows, 'Come, follow me,' is the new, specific form of the commandment of love of God" (*VSp* 18). Therefore, to follow Christ, and the condition of every believer is to be a disciple of Christ, "is thus the essential and primordial foundation of Christian morality" (*VSp* 19). This means, among other things, being chaste, poor, and obedient, according to the way proper to strict secular life, and within it, according to the vocation (for example, marriage or celibate life). But within that general modality of "religiously" living the evangelical counsels, are specific modalities that will have to be determined in the constitutions. Thus, they are not identical, neither the ways nor the obligations that flow from the vow of poverty in a monastery of strict cloister to those in a reli-

gious congregation dedicated to teaching. The constitutions will determine, in each case, the specific manner of living poverty and the use of material goods. The same could be said of the counsel of obedience: not all the mandates imply the obligation of necessarily fulfilling them through the vow of obedience. The provisions regarding the vow of chastity are less perceptible, but there are also different ways of fulfilling the vow, especially in the manner of cultivating and preserving that gift from the Holy Spirit.

2. *Observance of the institute's proper law*

The *sequela Christi*, the following of Christ, is the road for every Christian; in it is based Christian perfection (cf. *VSp* 19). Therefore, the first obligation of all religious is to have that following as the supreme rule of life, just as it was laid out in the Gospel and expressed in the institute's constitutions (c. 662).

This first duty of all religious, as well as its own specificity, is generically formulated in § 2 of the instant canon. The institutes of consecrated life do not constitute the state of perfection, but are certainly one state of perfection. Hence, the duty of all of its members is to strive to reach perfection in their state, that is, in their condition as Christians consecrated to God by public profession of the evangelical counsels and called to give testimony of the eschatological nature of the Church. This specific manner of searching for holiness is specified in two fundamental duties: a) the faithful and complete observance of the evangelical counsels, just as they are provided for in the constitutions; and b) the directing of one's own life in conformity with the rule that the proper law lays down on all levels, that which is established in the constitutions or other directory.

599 Evangelicum castitatis consilium propter Regnum coelorum assumptum, quod signum est mundi futuri et fons uberioris fecunditatis in indiviso corde, obligationem secumfert continentiae perfectae in caelibatu.

The evangelical counsel of chastity embraced for the sake of the Kingdom of heaven, is a sign of the world to come, and a source of greater fruitfulness in an undivided heart. It involves the obligation of perfect continence observed in celibacy.

SOURCES: *LG* 42; *PC* 12; *PO* 16; *ET* 15

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

The evangelical counsel of chastity

1. *Chastity and the Christian life*

"All the baptized are called to chastity. The Christian has 'put on Christ,' (Gal. 3:27) the model for all chastity. All Christ's faithful are called to lead a chaste life in keeping with their particular states of life. At the moment of his Baptism, the Christian is pledged to lead his affective life in chastity" (CCC, 2348). Thereafter, the CCC adds, taking from the text of the Declaration *Persona Humana*, of December 29, 1975: "People should cultivate [chastity] in the way that is suited to their state of life. Some profess virginity or consecrated celibacy which enables them to give themselves to God alone with an undivided heart in a remarkable manner. Others live in the way prescribed for all by the moral law, whether they are married or single" (CDF, *Persona humana*, 11). "Married people are called to live conjugal chastity; others practice chastity in continence" (CCC, 2349).

Besides priestly celibacy, which is also a manner of living the counsel of chastity *propter regnum coelorum*, without its being an obstacle to secularity(the condition of being a secular priest), there exist two forms of living chastity in perfect continence, and consequently two different forms of celibate life: *consecrated* celibacy and the *apostolic* celibacy of the laity. The latter "neither more nor less than marriage, fully enters the

condition of the layperson in the Church, and constitutes one of the forms in which the specific vocation of the Christian layperson can be manifested, according to which he or she will have to respond to the universal call to holiness."[1] This means two things: first, that there is no opposition at all between strict secularity (not consecrated) and the form of celibate life, freely chosen for apostolic motives or for motives of charity; second, that this celibacy freely assumed by the lay Christian, consequently, has no connotation of an eschatological sign, in the sense of separating the laity from their proper function, consistent with searching for the Kingdom of God, by dealing with and organizing temporal affairs from within the person's own structures.

2. *The consecrated celibate*

Obviously, in view of its context, c. 599 refers to the consecrated celibate, that is, to the counsel of chastity *propter regnum coelorum* professed by consecrated, whether religious or secular. This chastity that religious profess, the Council taught, "must be esteemed an exceptional gift of grace. It uniquely frees the heart of man (cf. 1 Cor 7:32–35), so that he becomes more fervent in love for God and for all men. For this reason it is a special symbol of heavenly benefits, and for religious it is a most effective means of dedicating themselves wholeheartedly to the divine service and the works of the apostolate. Thus for all Christ's faithful religious recall that wonderful marriage made by God, which will be fully manifested in the future age, and in which the Church has Christ for her only spouse" (*PC* 12).

Summarizing these conciliar words, the canon defines consecrated chastity as a sign of the world to come and a source of fecundity made more abundant for an undivided heart. In this way, by means of signification, there is marked a dividing line that distinguishes the practice of perfect chastity in continence outside the consecrated life, from the profession of that same evangelical counsel in the context of consecrated life, whose function is to be a public sign of the eschatological character of the Church.

The Council adds other considerations about the manner of living consecrated chastity, which deserve to be emphasized not only for the doctrine that they transmit, but also for the disciplinary models that they trace. "Religious, therefore, at pains to be faithful to what they have professed, should believe our Lord's words and, relying on God's help, they should not presume on their own strength. They should practice mortification and custody of the senses. Nor should they neglect the natural means which promote health of mind and body. Thus, they should not be influ-

1. J.L. GUTIÉRREZ, "El laico y el celibato apostólico," in *Ius Canonicum* 26 (1986), p. 239.

enced by the false doctrines which allege that perfect continence is impossible or inimical to human development and, by a kind of spiritual instinct, they should reject whatever endangers chastity. Further, let all, and especially superiors, remember that chastity is preserved more securely when the members live a common life in true brotherly love" (*PC* 12). As the CCC teaches, chastity is developed in friendship and "is expressed notably in friendship with one's neighbor. Whether it develops between persons of the same or opposite sex, friendship represents a great good for all. It leads to spiritual communion" (CCC, 2347).

3. *Canonical effects of the consecrated celibate*

The counsel of chastity, as it is professed by the consecrated, implies an obligation to observe perfect continence in celibacy. This implies, at the same time, the renunciation of marriage, with the various canonical effects stemming from whatever sacred bond by which the person assumed the counsel of chastity or of perfect continence in celibacy.

The first and most important canonical effect is the impediment to contract matrimony validly. This impediment takes place in the following circumstances, pursuant to c. 1088: *a)* when the profession of the counsel of chastity is made through a public vow in a religious institute: therefore, the assumption of this counsel, although it has a public character, does not constitute an impediment for consecrated virgins of c. 604; *b)* the second requirement is that the profession be perpetual. It is well known that in c. 1073 of the *CIC*/1917, the diriment impediment was based in the fact that *solemn* vows had been taken, or *simple* vows when by special prescription of the Apostolic See the vows had the power of nullifying the marriage. Today, it is certain that the categories of solemn and simple vows continue in force (cf. c. 1192), but they lack canonical importance for the purposes of the validity or nullity of a marriage.

For religious of temporary vows, as well as the members of secular institutes, even in the case of their having assumed the evangelical counsel through a vow, there is no impediment to contracting matrimony validly, but a hypothetical celebration of matrimony would constitute cause for automatic expulsion from the institute pursuant to c. 694 § 1,2° and c. 729.

Clerical religious and religious of perpetual vows cannot contract matrimony but can attempt it civilly. The latter constitutes an offense punished by suspension *latae sententiae*, in the case of clerical religious, or by an interdict *latae sententiae*, if dealing with religious of perpetual vows (cf. c.1394). In any case, attempting matrimony implies other canonical effects, like irregularity for receiving holy orders or for exercising those already received (cf. cc. 1041,3° and 1044).

Another of the canonical effects that originated in the celibate condition of the consecrated is the obligatory expulsion that the commission of certain offenses leads to, as provided in c. 695; among which are those classified in c. 1395, that is, those related to the sixth commandment of the Decalogue. Certainly c. 695 refers to consecrated religious but it is also applicable to consecrated seculars by reference to c. 729.

600 **Evangelicum consilium paupertatis ad imitationem Christi, qui propter nos egenus factus est cum esset dives, praeter vitam re et spiritu pauperem, operose in sobrietate ducendam et a terrenis divitiis alienam, secumfert dependentiam et limitationem in usu et dispositione bonorum ad normam iuris proprii singulorum institutorum.**

The evangelical counsel of poverty in imitation of Christ, who for our sake was made poor when he was rich, entails a life which is poor in reality and in spirit, sober and industrious, and a stranger to earthly riches. It also involves dependence and limitation in the use and the disposition of goods, in accordance with each institute's own law.

SOURCES: *LG* 42; *PC* 13; *PO* 17; *ES* II: 23, 24; *ET* 20, 21; *RFIS* 50

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

The evangelical counsel of poverty

Poverty voluntarily or freely chosen in imitation of Christ, who, being rich, became poor for our sake, "should be cultivated diligently by religious and, if needs be, expressed in new forms" (*PC* 13).

Pursuant to c. 600, this voluntary poverty, or the evangelical counsel of poverty, in the context of consecrated life, implies two things: *a*) to be poor in fact and in spirit and consequently, to lead a life markedly simple and lacking in worldly riches; *b*) dependence and limitation in the use and disposition of goods, in accordance with the nature of each institute and, of course, with what might be provided by its proper law. The latter does not prejudge the former; hence the warning of the Council that "with regard to religious poverty it is by no means enough to be subject to superiors in the use of property. Religious should be poor in fact and in spirit, having their treasures in heaven" (*PC* 13).

For a more precise determination of the obligations flowing from the sacred bonds with which the evangelical counsel of poverty is embraced, resort must be had to the provisions of c. 688 for the religious institutes and to those of c. 718 for the secular institutes. In any case, by the mandate of c. 598, it falls to each institute to determine in its constitutions the

manner of observing this evangelical counsel. No doubt this is a matter in which one sees marked differences in the manner of using material goods because the natures and ends of each institute are different. But this distinct disciplinary governance must not diminish the poverty *in fact and in spirit* which all consecrated by a sacred bond commit themselves to live.

The Council also wanted this personal poverty to be reflected in collective life. Hence, the recommendation of c. 634 that the institutes, provinces, and houses, avoid any appearance of luxury, immoderate wealth, or accumulation of goods; and likewise, the recommendation of c. 640 where the institutes are exhorted to strive to bear witness in a quasi-collective manner to charity and poverty, and to designate to the extent possible, some of their goods to the necessities of the Church and for the sustenance of the poor (cf. *PC* 13, the immediate source of those two canons). Perhaps that is why the prohibition against clerics conducting business or financial deals without the permission of the lawful ecclesiastical authority (c. 286), even though it doubtless still has a personal character when applied to religious by virtue of c. 672, does not cease to affect in some way the religious institutes themselves.

601 **Evangelicum oboedientiae consilium, spiritu fidei et amoris in sequela Christi usque ad mortem oboedientis susceptum, obligat ad submissionem voluntatis erga legitimos Superiores, vices Dei gerentes, cum secundum proprias constitutiones praecipiunt.**

The evangelical counsel of obedience, undertaken in the spirit of faith and love in the following of Christ, who was obedient even unto death, obliges submission of one's will to lawful Superiors, who act in the place of God when they give commands that are in accordance with each institute's own constitutions.

SOURCES: *LG* 42; *PC* 14; *PO* 15; *ET* 23–28

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

The evangelical counsel of obedience

Canon 601, like the immediately preceding canons, summarizes and gives canonical form to the doctrine of obedience for religious established in *Perfectae caritatis* 14. It is important to keep in mind, therefore, the two aspects gathered in the canon: the doctrinal aspects, which illustrate and aid in understanding the dimension of this evangelical counsel exactly as it should be lived by consecrated, and those aspects properly canonical, that is, those that determine the precise obligations implied by the assumption of the counsel of obedience through a sacred bond.

1. *Doctrinal scope of the evangelical counsel of obedience*

Following the doctrine established in the mentioned text of the Conciliar Decree, it is important to emphasize three fundamental dimensions of the counsel of obedience: its nature, its foundation, and the manner or spirit with which it must be assumed and lived in the institutes of consecrated life, whether religious or secular.

a) Obedience, teaches the Council, consists in the full surrender of one's will to God. In the case of the consecrated, the lawful superiors represent God; therefore, the profession of this evangelical counsel demands

the subjection of one's will to the lawful commands of the superiors. Certainly there will have to be a free, responsible, active, and participatory surrender of one's will, and there will have to be dialogue and communication between superiors and subjects, but the question of obedience, in every case, will be resolved by loving and sacrificial surrender and by the oblation of the will to the decisions of those who represent God.

b) The foundation for this obedience, its true reason for being, lies in the radical following of Christ, who took the form of a servant, learned obedience through suffering, and made the Cross the most sublime expression of His submission to the Father. Thus the following of Christ, who was obedient even unto death, is the root of the saving and apostolic fecundity of the obedience assumed by religious. Because of it "they are united more permanently and securely with God's saving will," and at the same time "they are thus bound more closely to the Church's service" (*PC* 14).

c) The surrender of one's will to the lawful superiors, following the example of Jesus Christ, does not involve blind submission, nor does it entail any lowering of the dignity of the human person or his freedom. To understand it in this way, as the Council reminds us, and as it is reproduced in c. 601, it is necessary to embrace the evangelical counsel of obedience with a spirit of faith and love. Faith makes God present in the persons of the superiors; love makes the surrender of one's own will free and bountiful. The Council thus describes the features that should adorn the obedience of the religious, lived with a spirit of faith in, and love for, God: "Religious, therefore, should be humbly submissive to their superiors, in a spirit of faith and of love for God's will, and in accordance with their rules and constitutions. They should bring their powers of intellect and will, and their gifts of nature and grace, to bear on the execution of commands and on the fulfillment of the tasks laid upon them, realizing that they are contributing towards the building up of the Body of Christ, according to God's plan. In this way, far from lowering the dignity of the human person, religious obedience leads it to maturity by extending the freedom of the sons of God" (*PC* 14).

Closely connected to this meaning of obedience is also the manner in which this authority is exercised. Therefore, the cited Conciliar Decree immediately adds a series of principles by which the superiors must govern themselves in the exercise of that authority, principles almost literally reproduced in c. 618 (see commentary).

2. *Normative scope*

To understand the juridical scope of c. 601, it is important to distinguish between obedience as a Christian virtue and the evangelical counsel of obedience assumed through a vow or other sacred bond. From the first

perspective, obedience of the religious covers all the possible relationships of subordination, both from within and without the institute. In this sense, the lawful superiors are those who are owed obedience, not only the internal superiors, but to all those who have power in the Church, even in civil society.

The present canon only makes reference to the obligation (moral and ascetic, also juridical) that flows from the evangelical counsel of obedience embraced through a sacred bond. In this sense, the canon makes two important general requirements.

a) Said counsel obliges one to submit the will to the lawful superiors. These are understood to be the internal superiors, lawfully designated. It would be appropriate to add that it is also a matter of the superiors, who lawfully carry out their function, who exercise power pursuant to the proper and universal law (cf. c. 617). In any case, it deals with internal superiors on all levels: general, provincial, and local. Moreover, one must not forget that the Roman Pontiff is the true superior in the strict sense of the term and therefore, c. 590 § 2 provides that all consecrated are obliged to obey him as their supreme superior and also by virtue of the sacred bond of obedience. It has been said[1] that the CICLSAL also would have the faculty to issue commands "by virtue of sacred obedience." But there are not sufficient facts to state the proposition in this general way except when its decisions can be classified as "pontifical" (cf. c. 30 and *PB* 18).[2]

b) Another of the requirements established by the norm is that the lawful superiors give commands in accordance with the constitutions. Therefore, it will be the fundamental Code of each institute that will establish the dimension or content of obedience to which the consecrated becomes obliged, through vows or other sacred bond. In this sense, ordering something allowed by the constitutions is enough to trigger the vow of obedience's obligation of compliance, without resort to its being formally called a "command by virtue of sacred obedience."

No doubt this is a matter of a moral obligation whose gravity, greater or lesser, is governed by Christian moral laws, seen from the commitment implied by a consecrated life. But that does not hinder it also being considered a juridical obligation with important repercussions in this dimension. For example, repeated violations of one's sacred bonds are one of the reasons for expelling a religious from the institute (cf. c. 696 § 1).

1. Cf. G. ESCUDERO, *El nuevo derecho de religiosos* (Madrid 1975), p. 82.
2. Cf. T. RINCÓN-PÉREZ, "El Decreto de la Congregación para el Clero sobre acumulación de estipendios," in *Ius Canonicum*, 31 (1991), pp. 627–656.

602 **Vita fraterna, unicuique instituto propria, qua sodales omnes in peculiarem veluti familiam in Christo coadunantur, ita definiatur ut cunctis mutuo adiutorio evadat ad suam cuiusque vocationem adimplendam. Fraterna autem communione, in caritate radicata et fundata, sodales exemplo sint universalis in Christo reconciliationis.**

The fraternal life proper to each institute unites all the members into, as it were, a special family in Christ. It is to be so defined that it proves of mutual assistance for all to fulfil their vocation. By their fraternal union, rooted and based in charity, the members are to be an example of universal reconciliation in Christ.

SOURCES: *PC* 15; *ES* II: 25–29; *ET* 26, 32, 34, 39–41; *VS* V

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

Fraternal life

The Decree *Perfectae caritatis*, after having dealt with the counsels of chastity, poverty, and obedience, assigns the subsequent section (n. 15) to the treatment of life in common and the spirit of fraternity that should nourish it. But the intent of the Council, especially on this point, is focused on religious life in the strict sense, one of whose essential elements is life in community. Canon 602, on the other hand, is inserted between the norms, equally applicable to the religious and the secular institutes. Therefore, it remains silent on life in community and only the spirit of fraternal communion is extracted from the Conciliar text, which must prevail among the members of an Institute of consecrated life, whether religious or secular.

In effect, the duty to be united in Christ as a special family applies to everyone; the duty of helping each other in fraternity in the achievement of each one's personal vocation and in the observance of the sacred bonds that have been assumed is incumbent on everyone. All in all, it is everyone's task to watch over the community's unity of spirit and to foster the bonds of fraternal communion. But the canonical form of living that fraternal communion is very different depending on whether it is in a religious institute or a secular institute.

Living the fraternal life in common belongs to the essence of a religious institute (c. 607 § 2), and consequently, so does being constituted in a community that lives in one house, under the authority of the designated superior pursuant to law (cf. c. 608). The members of the secular institutes, on the other hand, "are to live their lives in the ordinary conditions of the world, either alone in their families or in fraternal groups, in accordance with the constitutions" (c. 714).

Perhaps for those marked differences in the manner of living fraternal communion, from the canonical point of view, c. 712, regarding the secular institutes, refers only to the prescriptions of cc. 598–601, and mutes the prescription of c. 602, although its spirit is reflected later in c. 716 § 2.

603 **§ 1. Praeter vitae consecratae instituta, Ecclesia agnoscit vitam eremiticalam seu anachoreticam, qua christifideles arctiore a mundo secessu, solitudinis silentio, assidua prece et paenitentia, suam in laudem Dei et mundi salutem vita devovent.**

§ 2. Eremita, uti Deo deditus in vita consecrata, iure agnoscitur si tria evangelica consilia, voto vel alio sacro ligamine firmata, publice profiteatur in manu Episcopi dioecesani et propriam vivendi rationem sub ductu eiusdem servet.

§ 1. Besides institutes of consecrated life, the Church recognises the life of hermits or anchorites, in which Christ's faithful withdraw further from the world and devote their lives to the praise of God and the salvation of the world through the silence of solitude and through constant prayer and penance.

§ 2. Hermits are recognised by law as dedicated to God in consecrated life if, in the hands of the diocesan bishop, they publicly profess, by a vow or some other sacred bond, the three evangelical counsels, and then lead their particular form of life under the guidance of the diocesan bishop.

SOURCES: § 1: Paulus PP. VI, Litt. Ap. *Optimam partem*, 18 apr. 1971 (*AAS* 63 [1971] 447–450); *LG* 43; *PC* 1; *AG* 18, 40
§ 2: c. 487; *LG* 44

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

Eremitcal life

1. *Historical background*

"From the God-given seed of the counsels a wonderful and widespreading tree has grown up in the field of the Lord" (*LG* 43), and likewise so have been the multiple historical manifestations of consecrated life. Perhaps the first manifestation was anchoritism or eremitism. In the virgins, ascetics, and celibates of the early times, the beginnings of religious

life can undoubtedly begin to be seen. However, being a virgin or celibate or strictly living the Christian life (in a radical fashion as one would say today) is not identified with being religious. The anchorite or hermit, on the other hand, retires to the desert, to solitude, and separating from the world and for the secular being totally consecrated to God in the silence of prayer. Here a fundamental element of the religious manner of living the Christian life was established, which would be completed afterwards by life in community or cenobitic life.

2. *Eremitical life in the work of codification*

That eremitical life has survived in some religious orders, but it was (and is) a life of solitude within a religious institute and conforms to the traditions therein established. Canon 603 on the other hand gives juridical and public support to eremitical life, pure and simple, without a connection to religious institutes. Therefore, it provides the silence of solitude to any of the faithful, clerical or lay, man or woman, who desires to dedicate himself or herself to assiduous prayer and to penance; and this solitude is achieved through the strictest withdrawal from temporal affairs, for the worship of God and the salvation of the world.

This is clearly brought forth from the genesis of c. 603 itself. The title "De vita eremítica" was already introduced in the *schema* of 1971.[1] The reason it is cited is the perception of a movement in several parts of the world favoring the establishment of this kind of life, not limited to the monastic institutes, but open to ordinary faithful.

But the *schema* of 1977, the one that was sent to the consulting bodies, still distinguished two possible forms of eremitical life:

a) that which has already been admitted into and regulated by certain religious institutes;

b) eremitical life by one who, not being a member of an institute of consecrated life, professes the evangelical counsels, confirmed by a vow, which entails its own way of life *sub ductu ordinarii loci.*

Finally, the criterion won out that held the canon should only cover the eremitical life of those faithful who do not belong to any religious institute. Thus, the canon begins with the expression "Praeter vitae consecratae instituta," and concludes in § 2 with the reference of the hermit who publicly professes the three evangelical counsels, through a vow or other sacred bond, to the diocesan bishop, under whose direction he continues his own way of life. This does not mean that the existence of ere-

1. Cf. *Comm.* 5 (1973), pp. 63–65. Cf. E. SASTRE, "La vida eremítica diocesana forma de vida consagrada," in *Commentarium Pro Religiosis*, 70 (1989), pp. 89–115, 116–130: appendices on the formation of c. 603.

mitical or anchoritic life is rejected, but that it is not the form of life referred to or given public recognition in c. 603. It will be the constitutions of the institutes that will be charged with regulating any other form of eremitical life connected with a religious institute.

3. *Eremitical life as a form of consecrated life*

Pursuant to c. 603 § 1, eremitical life, recognized by the Church, is that "in which Christ's faithful withdraw further from the world and devote their lives to the praise of God and the salvation of the world through the silence of solitude and through constant prayer and penance." This recognition does not necessarily imply that such form of life enters into the category of consecrated life. For that it is necessary for the hermit to meet the requirements established in § 2. If those requirements are met, that is, if the hermit publicly professed the three evangelical counsels, this is when the eremitical life becomes configured properly as consecrated life. Although not associated, that is, not capable of being included in the category of institute of consecrated life, it is a new form of consecrated life in the broad sense of this term, since the hermit can profess publicly the three evangelical counsels through a vow or other sacred bond. In general terms, it would not be precise to say, consequently, that the eremitism sanctioned by the canon is a new form of religious life. That was the tenor of c. 92 of the *schema* of 1977. But the possibility of profession through other sacred bonds distinct from vows was deliberately introduced, which forced it to be generically configured as a form of consecrated life. Finally, it deals with *diocesan* eremitical life in the sense that it is nominally (prior drafts of the canon talked about local ordinaries) before the diocesan bishop, whom the hermit publicly professes the three evangelical counsels and under whose authority the hermit remains.[2]

Finally, it is important to note the CCC (nos. 920–921) has also emphasized the importance of eremitical life, including that which cannot be categorized properly as consecrated life for the lack of public profession of the evangelical counsels. Whether they profess these counsels or not, the hermits "manifest to everyone the interior aspect of the mystery of the Church, that is, personal intimacy with Christ. Hidden from the eyes of men, the life of the hermit is a silent preaching of the Lord, to whom he has surrendered his life simply because He is everything to him. Here is a particular call to find in the desert, in the thick of spiritual battle, the glory of the Crucified One" (CCC 921).

2. Cf. D.J. ANDRÉS, "Proyecto de estatutos diocesanos para los ermitaños de la Iglesia particular," in *Commentarium Pro Religiosis*, 67 (1986), pp. 185–248.

604 **§ 1. Hisce vitae consecratae formis accedit ordo virginum quae, sanctum propositum emittentes Christum pressius sequendi, ab Episcopo dioecesano iuxta probatum ritum liturgicum Deo consecrantur, Christo Dei Filio mystice desponsantur et Ecclesiae servitio dedicantur.**

§ 2. Ad suum propositum fidelius servandum et ad servitium Ecclesiae, proprio statui consonum, mutuo adiutorio perficiendum, virgines consociari possunt.

§ 1. The order of virgins approximates to these forms of consecrated life. Through their pledge to follow Christ more closely, virgins are consecrated to God, mystically espoused to Christ and dedicated to the service of the Church, when the diocesan bishop consecrates them according to the approved liturgical rite.

§ 2. Virgins can be associated together to fulfil their pledge more faithfully, and to assist each other to serve the Church in a way that befits their state.

SOURCES: § 1: SCR Resp., 25 mar. 1927 (*AAS* 19 [1927] 138–139); *SC* 80; *Ordo consecrationis virginum*, 31 maii 1970
§ 2: *AA* 19

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

The order of virgins

1. *General configuration*

The order of virgins comprises those Christian women who, through their pledge to follow Christ more closely, are mystically espoused to Christ, the Son of God, and dedicated to the service of the Church. These would be the "theological" elements that the canon has preferred to call *ordo* rather than *status*, though later the state proper to the virgins is alluded to in § 2.

But such generically described elements can form a part of the life of many Christians without making them an *ordo virginum* within the meaning of the canon. A necessary requirement for acquiring that special condition of life is being consecrated to God by the diocesan bishop according to the approved liturgical rite. In this respect, one may point out that *SC* 80 ordered the revision of the rite of consecration of virgins, which task was accomplished by the *SCDW* in the Decree of May 31, 1970.[1] The rite is applicable to virginal consecration, both for nuns and women who continue living in the world (to whom c. 604 refers). For the latter, it is an indispensable requirement to be consecrated by the diocesan bishop. Although the canon says nothing about it, consecrated virgins also come under the governance of the diocesan bishop and it is up to him to establish the norms for preparation and admission to consecration.

Paragraph 2 recognizes the right of these virgins to associate, but this does not mean, in our opinion, that these possible associations juridically constitute an institute of consecrated life in the strict sense, unless the Apostolic See, pursuant to c. 605, elevates them to that rank. This does not prevent "as provided analogously in c. 603 § 2, for the eremites, the consecrated virgins, whether individually or in association, from assuming publicly, at the hands of the diocesan bishop, vows or other sacred commitments of professing or practicing the evangelical counsels of poverty and obedience. In such case they should be considered as constituted in the state of consecrated life within the meaning of c. 573,"[2] but in no case as constituting an institute of consecrated life.

2. *Juridical nature*

Regarding the juridical nature of that *ordo virginum*, the latent controversy among the group of consultors charged with the revision of this part of the Code has appeared again among the commentators. It is a matter of really knowing if the order of virgins, as it is configured in c. 604, is a new form of unassociated consecrated life, like the eremitical life that fulfills the requirements of c. 603 § 2, or is it only a close or assimilable form, not truly a form of consecrated life.

a) *In the work of codification*

In the work of codification, in effect, there were consultors who preferred the term *ordo* instead of *status* because, notwithstanding consecration, the virgins did not belong to the state of consecrated life gained through the evangelical counsels. It is not a form of consecration gained

1. *AAS* 62 (1970), p. 650; cf. R. METZ, "Le nouveau Rituel de Consécration des vierges, Sa place dans l'histoire," in *La Maison-Dieu*, 110 (1972), pp. 88–115.
2. E. GAMBARI, *I religiosi nel Codice. Commento ai singoli canoni* (Milan 1986), p. 101.

through assumption of the evangelical counsels, because two of the three counsels are lacking.

In the text that was debated, only "sanctum propositum emitentes" was stated. In view of this, one consultor proposed that "sanctum propositum Christum pressius sequentes," be said because in this way, poverty and obedience would be understood as being implicitly linked to chastity.

For the relator, the vow that is taken in a solemn ceremony is a public vow and thus the virgins are situated in a public state in the Church. For this reason, added the secretary, they form a part of the state of consecrated life, although they do it as individuals.[3]

b) *Doctrinal debate*

Various opinions were formulated among the commentators on c. 604. For Gambari, for example, the order of virgins, according to the canon, approximates or is similar to the forms of consecrated life presented in the preceding canons. But as a category, they do not constitute a form of a state of consecrated life in the sense of c. 573, because as such it implies only the purpose or determination to follow Christ in virginity, but not to assume a sacred commitment to the other counsels. The canon refers only to the consecrated virgins who normally continue living in the world.[4]

The profession of the three evangelical counsels, constitute the essence of the form of consecrated life. This is the basic reason for which that juridical category is denied to the order of virgins in which the counsel of chastity is explicitly and publicly professed. Perhaps for that reason, and this is the other argument that is employed, the literalness of c. 604, contrasts with the literalness of c. 603. When the hermit fulfills the established requirements, among which is public profession of the three evangelical counsels, he is recognized by the law as being surrendered to God *in consecrated life*. Canon 603 recognizes, in sum, that "besides the institutes of consecrated life," the eremitical life can exist as a form of unassociated consecrated life. Canon 604, on the other hand, begins by establishing an analogy or similarity, but not an identity, between the forms of consecrated life to which the Code has referred previously, and the order of virgins. This seems to be the meaning that is best given to the formula employed: "hisce vitae consecratae formis accedit ordo virginum."

But not everyone agrees with this interpretation. The word *accedere* should not be translated as "to be similar to" or "to approximate," but as the equivalent to "praeter formas praecedentes," because the order of virgins also belongs to the consecrated life, even though their situation is special and thus different formal conditions are required. Such was, ac-

3. Cf. *Comm.* 11 (1979), pp. 331–333.
4. Cf. E. GAMBARI, *I religiosi nel Codice...*, cit., p. 99.

cording to this opinion, the intent of the consultors who edited c. 604. For them, it was a matter of a true form of consecrated life, although individual, like eremitical life. For the rest, although in the order of virgins chastity was the most notable counsel, the other two evangelical counsels are included in the holy purpose of following Christ more closely, and they also receive their meaning and value from consecration.[5]

Whatever the outcome of this doctrinal controversy, the fact is that the Code has given public and juridical support to this form of Christian life. It is a form of public life constituted by a solemn rite and the public taking of the vow of chastity. A public vow, however, that nevertheless does not constitute an impediment to contracting matrimony validly since such impediment only affects those who are bound by the perpetual vow of chastity in a religious institute (c. 1088).

3. *Consecrated virgins in the CCC*

Included within the general epigraph of consecrated life, the CCC (nos. 922–924)—whose text is almost literally reproduced in c. 604— pays special attention to the consecrated virgins. "From apostolic times, says the *Catechism*, Christian virgins, called by the Lord to cling only to Him with greater freedom of heart, body, and spirit, have decided with the Church's approval to live in a state of virginity 'for the sake of the Kingdom of heaven' (Mt 19:12; cf. 1 Cor 7:34–36)" (n. 922). The virgins are consecrated by the diocesan bishop according to the approved liturgical rite, and by this solemn rite, adds the Catechism, citing the *Ordo Cons. Virg., Praenot.* 1: "the virgin is 'constituted ... a sacred person,' a transcendent sign of the Church's love for Christ, and an eschatological image of this heavenly Bride of Christ and of the life to come" (n. 923).

5. Cf. S. RECCHI, "Verbum 'accedere' in cc. 604 et 731 Codicis. Quaesita et interpretatio," in *Periodica* 78 (1989), pp. 453–476.

605 **Novas formas vitae consecratae approbare uni Sedi Apostolicae reservatur. Episcopi dioecesani autem nova vitae consecratae dona a Spiritu Sancto Ecclesiae concredita discernere satagant iidemque adiuvent promotores ut proposita meliore quo fieri potest modo exprimant aptisque statutis protegant, adhibitis praesertim generalibus normis in hac parte contentis.**

The approval of new forms of consecrated life is reserved to the Apostolic See. Diocesan bishops, however, are to endeavour to discern new gifts of consecrated life which the Holy Spirit entrusts to the Church. They are also to assist promotors to express their purposes in the best possible way, and to protect these purposes with suitable statutes, especially by the application of the general norms contained in this part of the Code.

SOURCES: *LG* 45; *PC* 1, 19; *AG* 18; *RC* prooemium; *MR* 9c, 51

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

New forms of consecrated life

There are two forms of consecrated life of an associative nature in the Church today: the religious institutes and the secular institutes. These two forms *accedunt* (c. 731), resemble, approximate, or approach the SALs, which are regulated in a separate section from the ICLs.

In connection with these associated forms, c. 603 § juridically recognizes the existence of eremitical life as a form of individual consecrated life. One doctrinal sector includes in this category, that is, as a form of individual consecrated life, the order of virgins of c. 604. In any case, it is a comparable form, like the SALs (see commentary on c. 604).

Within these forms, especially the associative forms, those that are configured as *institutes*, exist a great variety of types of forms, and within each type, a rich multiplicity of foundational charisms, whose particular identities are gathered and safeguarded by the fundamental code of the corresponding institute.

Therefore, the numerators are many, but all are related in the common denominator, which is a form of consecrated life configured as such in cc. 573–574.

Keeping in mind this minimum-configuring element of consecrated life, so that a foundational charism is translated canonically into an ICL, the definitive sanction of the ecclesiastic authority is required, as the Council has already established (*LG* 45) and which is stated now in c. 576. But c. 605 goes beyond since it exclusively reserves approval to the Apostolic See, not for new institutes (c. 579), but for new forms of consecrated life, that is, for forms not contemplated or established in the present canonical system. With that the Church recognizes that the present configuring norms of consecrated life are always open to the action of the Holy Spirit, which can inspire in the future other forms that are not accommodated in the present system in since they lack one of the elements that are now considered essential.

This is how it has been throughout history. The solemn vow, being essential, gave way with the approval of the religious congregations to the public vow becoming essential. This ceased being essential to configure the form of consecrated life (although it still is for religious life) when the secular institutes were approved. Most recently in the Code itself, the Church sanctions the existence of forms of non-associative or individual consecrated life.

But it will not be an easy job to discern when in the future the Holy Spirit has inspired a new way of living consecrated life. Thus, c. 605, while reserving its approval to the Apostolic See, entrusts important tasks to the diocesan bishops for the time between the appearance of a possible new gift from the Holy Spirit and its definitive approval by the Apostolic See. In this stage of experimentation, the bishop is entrusted with three important tasks:

a) the discernment of those new gifts of consecrated life granted to the Church by the Holy Spirit, and which can be latent in associations or movements that operate in the diocese;

b) the necessary aid to their promoters, by inviting them, for example to constitute themselves in an association of faithful as a starting point and experiment;

c) the drafting of statutes that regulate this new germinal form of consecrated life, following as a guide to the general norms in effect regarding consecrated life.

In the Apostolic Exhortation. *Vita consecrata*, n. 61, Pope John Paul II established some criteria of discernment. He also announced the creation of a commission for dealing with matters relating to new forms of consecrated life.

606 **Quae de institutis vitae consecratae eorumque sodalibus statuuntur, pari iure de utroque sexu valent, nisi ex contextu sermonis vel ex rei natura aliud constet.**

Provisions concerning institutes of consecrated life and their members are equally valid in law for both sexes, unless it is established otherwise from the context or from the nature of things.

SOURCES: c. 490

CROSS REFERENCES: —

COMMENTARY

Tomás Rincón-Pérez

Legislative unification between institutes for men and institutes for women

This canon establishes a general principal that the norms regulating the life of the institutes and of its members is equally valid for the institutes for men and the institutes for women except when the context or nature of the things indicates that the legal disposition affects one or the other kind of members.

Canon 490 of the *CIC*/1917 also had formulated this principle, but in the legislative usage of the prior code there were notable differences in treatment depending on whether the institute was for men or for women. Take for example, the complicated discipline regarding the confessors of women religious (cc. 520–527 *CIC*/1917). These include the requirement of a special jurisdiction to validly and licitly hear the confession of any woman religious (c. 876 *CIC*/1917), or the discriminatory treatment, in relation to men, that the former c. 651 provided regarding the expulsion of perpetually professed women religious.[1]

In the present Code these and other differences disappear in the legislative treatment. Regarding the sacrament of penance, c. 630 § 1 recognizes the principle of freedom for all the members of all the institutes by providing in § 3 a disciplinary difference; not because of the institute's being for men or for women, but because of its lay nature. In reference to expulsion of religious, the legislative unification is absolute.

1. Cf. *Comm.* 11 (1979), pp. 14–18.

Among the small differences that do survive, it is fitting to mention some of the Holy See's legislative reservations in relation to nuns. These include the reservation of c. 609 § 2, regarding the erection of a monastery for nuns; the reservation of c. 616 § 4, regarding the suppression of a monastery *sui iuris* of nuns; canon 667 § 3, which deals with *papal* cloister, required in the monasteries for nuns of entirely contemplative life; and of *constitutional* cloister, required in the other monasteries for nuns. Finally, pursuant to c. 686 § 2, the Apostolic See has exclusive competence to grant the indult of exclaustration to nuns, in contrast to the other institutes, where the general superior can grant it with the consent of the council.

TITULUS II
De institutis religiosis

TITLE II
Religious Institutes

607 **§ 1. Vita religiosa, utpote totius personae consecratio, mirabile in Ecclesia manifestat conubium a Deo conditum, futuri saeculi signum. Ita religiosus plenam suam consummat donationem veluti sacrificium Deo oblatum, quo tota ipsius exsistentia fit continuus Dei cultus in caritate.**

§ 2. Institutum religiosum est societas in qua sodales secundum ius proprium vota publica perpetua vel temporaria, elapso tamen tempore renovanda, nuncupant atque vitam fraternam in communi ducunt.

§ 3. Testimonium publicum a religiosis Christo et Ecclesiae reddendum illam secumfert a mundo separationem, quae indoli et fini uniuscuiusque instituti est propria.

§ 1. Religious life, as a consecration of the whole person, manifests in the Church the marvellous marriage established by God as a sign of the world to come. Religious thus consummate a full gift of themselves as a sacrifice offered to God, so that their whole existence becomes a continuous worship of God in charity.

§ 2. A religious institute is a society in which, in accordance with their own law, the members pronounce public vows and live a fraternal life in common. The vows are either perpetual or temporary; if the latter, they are to be renewed when the time elapses.

§ 3. The public witness which religious are to give to Christ and the Church involves that separation from the world which is proper to the character and purpose of each institute.

SOURCES: § 1: *LG* 44, 45; *PC* 1, 5, 12, 25; *AG* 18; *ET* 13; *RC* 2
§ 2: cc. 487, 488,1°, 577 § 1, 594 § 1; *PC* 15; *ES* II: 25; *MR* 10
§ 3: *LG* 44; *PC* 5; *ES* II: 31; *ET* 35

CROSS REFERENCES: § 1: cc. 573 § 1; 654; 1191 § 1
§ 2: cc. 602; 603 § 1; 665; 714; 716 § 2; 731 § 1; 740; 1191ss.
§ 3: cc. 574 § 2; 578; 588 § 3; 598 § 1; 603 § 1; 610 § 1; 611 § 1;
633 § 2; 638 § 1; 642; 652 § 2; 659; 667 §§ 1 et 3; 673; 680; 708; 710; 722 § 2; 735 § 3

COMMENTARY

Domingo J. Andrés, cmf.

1. Paragraph 1 presents a profound descriptive and selective idea of the most acceptable and specific theological categories of *religious life*, found in part in c. 573, wherein *consecrated life* is defined. Analytically compared with that canon, it is clearly demonstrated that all religious life is consecrated life, quintessentially consecrated life and historically the first, but not all consecrated life is religious life.[1]

It does not prescribe something that must be practiced, much less something that must be believed; it does not even exclude other theological categories through which the substance of religious life can be explained. It is limited to affirming in the manner of a proem these categories that *ecclesially manifest* religious life. Religious consecration appears as a kind of sacrificial and worshipful marriage to God, which alludes to the life to come. Thus, there is created a suitable atmosphere and the inspirational root for the group of norms that follow, the first of which is the concept of *religious institute*, which the following §§ of c. 607 clearly establish.

In conformance with the categorical expression employed by § 1, it must be said that for the canonical legislator, the marriage established between God and religious by the assumption of religious life on the part of the latter, involves the following:

a) *sacrificial* or immolatory of the entire person in which, by existing and upon existing in the Church, the person exists, lives, thinks, and works;

b) *charitable* inasmuch as it intrinsically pertains to the "munus sanctificandi" of the Church, and because of the theological quality of charity, taken by religious to its height of perfective exigency, it is, at the

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 49–61; M.J. ARROBA CONDE, "Congregación," in A. APARICIO-J.M. CANALS, cmf (dirs.), *Diccionario teológico de la vida consagrada* (Madrid 1989), pp. 345–354.

same time, the cause and scope of religious consecration. This is its inherent and increased purpose, and motivator for the practice of the evangelical counsels, and thus, the author of the highest worship that a creature can pay to God;

c) *worshipful*, because of the vows through which the evangelical counsels are practiced. Because of the character of the religion, by virtue of which vows must be observed and by means of which, next to the vow of which it is form and end, perfect charity is unified and expressed, and, therefore, it is an existential act of the highest worship;

d) *eschatological*, for it signifies the world to come in which everyone will embrace divinity in perfect and lasting matrimony.

2. In §§ 2 and 3, the legislator formulates the complete and canonical idea that binds and underlies all the canons that follow regarding *religious institute*. This extremely important concept is composed of the following: a) two denominations: *institute and society*, the first being new with respect to the *CIC*/1917, which especially employed the word *religion*, which is undeservedly extirpated (in the specific sense of institute or congregation) from the current *CIC*;[2] b) an essential and inevitable element, besides being exclusive: the *public vows*; c) a second integral component: *fraternal life in common*, essential and inescapable inasmuch as it is *fraternal* (cf. c. 602), although variable in some cases regarding the requirement that it must be lived in common; d) a third complementary element: *separation from the world*, more flexible and specific to each institute than vows and fraternal life in common; in order to expressly emphasize the distinction, a specific paragraph of the canon § 3, has been devoted to it.

These are supported by:

a) *Institute* (*in-statuo, instatuto*: to place, to plant, to establish, to institute: etymological meanings that converge in the meaning of stability and consistency of the object). In the context of consecrated life, institute means every association, community, or society of life, consecrated by profession of the counsels, whether of the religious or secular kind; thus, since the term includes the radical meaning of *state*, the opting for institute is a truly correct choice, although each singular institute might continue utilizing for itself other words derived from their original denomination. (The correctness of the choice would have been more nearly perfect, if even once the denomination *religion* had also been utilized, which appeared in the *CIC*/1917 more that two hundred-fifty times signifying every cell or unit of religious state);

b) *Society* (comes from *socius* and *sequor*: to follow, to walk together, to be accompanied, to follow someone in a common purpose). It

2. D.J. ANDRÉS, "La Religión. Llanto por una palabra clásica eliminada del Código de derecho canónico," in *Commentarium pro Religiosis et Missionariis*, 73 (1992), pp. 3–38.

means in this canon every ecclesial association, free, religious-spiritual, unitary, apostolic, charismatic, and organized as a society, whose members take public vows, live in common and separate themselves from the world, pursuant to the laws of the respective institute. The nucleus of entity of this society called the religious institute is characterized by a complex reality of a supernatural ecclesial, moral, and juridical order, which contains, ecclesiatisized, all the essential elements of the universal and abstract concept of society.

c) *Public Vows*: The strict concept of vow and its kinds, which must be understood as underlying the present canon, are those that are coined in the cc. 1191ff. Turning our attention now to those canons and the juridical logic of the context, the following are noteworthy of the religious vow:

— *publicity*: the vow is public not because it is taken before the community, but before the person of a lawful ecclesiastical superior and because the vow is accepted in the name of the Church. The publicity is suitably signified by the act of profession, realized according to the *ordo Professionis*, as a liturgical and worshipful act, in the name of the Church, by persons designated by the Church and with rites and formulas approved by the Church itself (cf. c. 834 § 2);

— *triad:* they must be essentially three, corresponding to the respective three evangelical counsels of chastity, poverty, and obedience. Through the proper Law, more than three vows can be taken, which are also approved by the Church and likewise public, but which can never be used as substitutes for the triad. These vows have the benefit of a greater specific capacity to emphasize a cardinal aspect of the patrimonial charisma and physiognomy of the institutes that have established them.

— *perpetually* or *temporarily renewable*, from the point of view of their duration. *Perpetual* vows are those that are taken for life, which is the modality not only most consonant with the nature and entity of the religious vow, but is most commonly practiced by almost the totality of the religious institutes. *Temporary* vows are those that are renewable upon the expiration of the period of profession, either permanently renewable, and of such a character that perpetual vows are never taken, although the intention of perseverance is to be perpetual, or temporarily, as pedagogically prior to the perpetual vows, pursuant to c. 655, and in those that irrevocably entail, likewise, the perpetual and theological intention to persevere;

— *indispensability in the ecclesiastical juridical order*: the bonding that they produce is an effect derived from their public character, more precisely, from their acceptance by the Church upon taking them before the person of the lawful ecclesiastical superior. This implies that their fulfillment becomes a serious obligation and can be required in the external or social jurisdiction of the Church, which, to contribute to their observance, creates certain ineligibilities and disabilities, states impedi-

ments and sanctions transgressions, not excluding expulsion from the religious state (cf. cc. 694–704);

— regarding *solemnity* or *simplicity,* it must be said that this distinction has been relegated to c. 1192 § 2, because it behooves the laws of the institutes to declare the vows solemn or simple, or to cease declaring them as such, describing the respective singular effects for each hypothesis, in harmony with the pertinent tradition;

— *reservation*: as an immediate effect of publicity, every religious vow is *inherently and always* reserved to the competent authority of the Church, supreme or episcopal, according to the pontifical or diocesan character of each religious institute;

— *certain sacral condition of the person professed through a religious vow*: theologically, it comes under the categories of "consecration to God of every person," consummation of his full surrender," and "continually offering to God;" juridically, at least, it is connected to the protection of the person of religious that flows from c. 1370 § 3, which provides punishment and a just sentence for the one who, "with contempt for the faith or the Church ..." employs physical violence against a religious.

d) *fraternal life and in common*: the conjunction joining them together means to suggest the genuine distinction between both dimensions of the singular communal life. Inasmuch as it is fraternal, it has the Christological, familiar, mystical, etc. connotations of c. 602, regarding all the forms of consecrated life. Inasmuch as it must be *in common*, as a particular and nontransferable dimension of religious, it implies:

— the *incorporation*: through the profession of vows, into the institute and the related renunciation of an autonomous and independent life; and *cohabitation*, as a complex magnitude to which organically belong the habitation in the same house and under the same roof, a life style entirely communal in the submission to the one same discipline under common superiors and in the observance of the identical proper law;

— *integratively*, the nuclei become complex: *liturgico-spiritual*, with numerous sacramental practices and of common piety; *disciplinary*, in conformance with what has been previously indicated; *economic*, signified, especially, by the common requirements of cc. 668 and 600; and *penal*, by means of, especially, those of c. 696 § 1, which punishes unlawful absence from the house.

No other form of consecrated life can be identified as having a need for such intensity and attention to detail regarding communal life as religious consecrated life.

3. *Separation from the world*: paragraph 3 assumes, inasmuch as it pertains to the nature of the religious institute, and, at the same time, imposes or continues imposing a certain separation from the world, that the nature and end of each institute will determine the various intensities of

the practice. The rationale for the norm is made to depend on the dual *Christian* and *ecclesial* public testimony that the religious must give. For the same reason, Christ and the Church will be the two fundamental references from which each institute must gauge the specific degree of its separation from the world.

The concept of world underlying the norm is what the monastic and religious tradition defined as the seat of evil and of the Evil One, subject to the slavery of sin, the world that radically denies the present and future Kingdom. In no case should it ever be thought "that their consecrated way of life alienates religious from other men or makes them useless for human society. Though in some cases they have no direct relations with their contemporaries, still in a deeper way they have their fellow men present with them in the heart of Christ and cooperate with them spiritually, so that the building up of human society may always have its foundation in the Lord and have him as its goal" (*LG* 46).

The universal canonical points and prescriptions are clear regarding the separation of vows, cloister, life in common, the habit, and the houses themselves in which the religious lives. Numerous other points and prescriptions proper to each institute are found in the constitutions and directories.

CAPUT I
De domibus relgiosis earumque erectione et suppressione

CHAPTER I
Religious Houses and Their Erection and Suppression

608 **Communitas religiosa habitare debet in domo legitime constituta sub auctoritate Superioris ad normam iuris designati; singulae domus habeant saltem oratorium, in quo Eucharistia celebretur et asservetur ut vere sit centrum communitatis.**

A religious community is to live in a lawfully constituted house, under the authority of a Superior designated according to the norms of law. Each house is to have at least an oratory, in which the Eucharist is celebrated and reserved, so that it may truly be the centre of the community.

SOURCES: cc. 488,5°, 497 § 2, 516 § 1, 610 § 2, 1265 § 1, 1274 § 1; CodCom Resp. X, 14 iul. 1922 (*AAS* 14 [1922] 529); CodCom Resp. III et VII, 20 maii 1923 (*AAS* 16 [1924] 113–115); *ET* 25, 48; SCRSI Decr. *Experimenta*, 2 feb. 1972, 1 (*AAS* 64 [1972] 393)

CROSS REFERENCES: 115 § 1, 609, 617–630, 634 § 1, 640, 899–944, 1223–1229

COMMENTARY

Domingo J. Andrés, cmf.

1. In line with the modern emphasis on the local community, the following essential elements are established in the norm:

a) a group of consecrated religious;

b) the indispensability of the lawful constitution of a house as a permanent place of habitation;

c) at least one oratory as the spiritual heart of the community and the house.[1]

2. The *community* of consecrated persons is the fundamental element or backbone, both in the genesis of the house and in its life, changes and action *ad intra* and *ad extra*. Here the legislator has taken a big step by not having begun by defining the house as a material *locus*.

A specific number of persons is not required because religious houses are not distinguished according to this criterion. Also, a predominant number of clerics or lay members is not required; not even numerical proportions among these or similar criteria are necessary. It is only clear and universal that to constitute a religious house as a juridical person pursuant to the current law (cf. c. 634), at least three members are required (cf. c. 115 § 1).

3. The *obligatory nature* or imperative force of the norm is stated clearly in the verb *debet*, which forces all the communities to be constituted in canonical houses and it imperatively links the rest of the elements that configure the house

This determination, which was not stated so expressly in the *CIC*/1917, because the different context made it useless or unnecessary, does not intend to definitively disqualify any of the latest experiments in communal life. Like the small communities, its meaning consists simply in imposing the aforementioned structure as a canonical ideal on the communities, including on the small ones, so that, due to the lack of an essential element, they will not be able to be canonically conceived or treated as true religious houses.

4. The *place* is suggested by the weight of the verb *habitare*. It deals with the material and social seat of the religious group.

Nothing is said of the conditions, dimensions, location, or property or otherwise of the institute, all able to be regulated autonomously by the law of the institute. It is mentioned, in contrast, that the house must have an *oratory*, which by the context, implies that it in its own way is obliged to give testimony to poverty (cf. c. 640). The house will have to be modest and humble, so as to indicate to everyone that in it live professedly poor and charitable people.

5. By *lawful constitution* should be understood the establishment or foundation of the house through the act and document of erection (c. 609), effected in conformance with the universal law, expressed in

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 63–64; M.M. MODDE, "Religious Houses and Governance (cc. 607–633)," in *A Handbook on Canons 573–746* (Collegeville 1985), pp. 59–98.

these canons, and with the proper law (constitutions), in which the competent authority for its constitution must be stated (cf. 609 § 1).

6. The *local superior*, who holds the structure of the house together by endowing the community with a secure principle of personal authority and life, is an essential figure without whose immediate presence a truly canonical religious house could not exist.

The superior is designated according to the norm of the constitutions (cf. cc. 609 § 1 and 625 § 3), as well as according to other norms that are stated in the universal law (cf. cc. 624ff).

7. The *oratory* is the final and latest express requirement essential to every lawfully constituted religious house. The oratory is for the use of the community, which is its spiritual and organic center, and if possible, materially and architecturally so, as well. This oratory must not be confused with the church open to the public and proper to the clerical institutes of which c. 611,3° speaks. Rather it could be one place but with a well-distinguished dual function.

The indispensability of the existence of the oratory is accentuated by the imperative of the verb *habeant*, joined to the terms *singulae domus*, thus leaving no doubt about the oratory's highest necessity and utility for the community, keeping in mind the eminent ends that in this context justify its being imposed.

The meaning and ends that the canons assign to the oratory are solid and in profound harmony with the canonical system of which the norm forms an immediate part:

a) celebration and reservation of the Eucharist to facilitate the observance of the spiritual and Eucharistic obligations imposed on everyone by c. 663 § 2;

b) the duty of considering and having it in fact as the genuine center of the community, at its exclusive service, guaranteeing to everyone a worthy sacred space necessary to observe the multiple duties of contemplation and of set prayer, keeping in mind the nature of each institute as stated in cc. 663 and 664;

c) the exact same reason justifying the oratory should be effected in respect to the innumerable practices of communal and personal piety in which the tradition and the proper law of the all the religious institutes abound in fact.

609 **§ 1. Instituti religiosi domus eriguntur ab auctoritate competenti iuxta constitutiones, praevio Episcopi dioecesani consensu in scriptis dato.**

§ 2. Ad erigendum monasterium monialium requiritur insuper licentia Apostolicae Sedis.

§ 1. Houses of a religious institute are established, with the prior written consent of the diocesan bishop, by the authority competent according to the constitutions.

§ 2. For the establishment of a monastery of nuns, the permission of the Apostolic See is also required.

SOURCES: § 1: c. 497 § 1; *AIE* 2°
§ 2: c. 497 § 1; *AIE* 2°

CROSS REFERENCES: § 1: cc. 37, 48–58, 368, 376, 381–402, 586, 607 § 2, 608, 610
§ 2: cc. 361, 614, 616 § 4, 630 § 3, 647 § 1, 667 § § 3 et 4

COMMENTARY

Domingo J. Andrés, cmf.

The norm constitutes an organic complement to c. 608, regulating the fundamental conditions that the crucial act of the lawful constitution of a religious house must have, namely, that of establishment. It may be affirmed that in regard to the material content of the cited c. 608, the present canon prepares to impose its juridical form.[1]

1. The indisputable imperativeness of the norm lies in the fullness of the Latin formulation in the solemn or majestic present indicative: *eriguntur* and *erigantur*, although the latter could have been more expressive of the bond to which the norm submits all who lawfully take part in its execution.

It is clear, then, that all religious houses must be established by the forms and with the conditions that are established here, without whose observance a religious community cannot exist as such at all in canon law.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 66–69.

2. The *act of establishment* delineates the bloc of substantive and material requirements mentioned by cc. 608 and 610, whose purpose is to confer upon them juridical existence and form.

The establishment can be defined in this case as a voluntary and free act of lawful and formal constitution, emanating from the competent religious superior. As such, the religious community is elevated to the public sphere of canon law, and conferring upon it the name and quality of a religious house and a canonically juridical person with the rights and duties attributed to it by the universal law and the law of the institutes.

It is necessary *ad validitatem* that the superior *decree* the establishment, that is, accomplish it through the issuance of a formal decree so that the house can be endowed with the mentioned juridical personality. This, nevertheless, is not conferred on the house by the decree of the superior, but by the law itself through such decree.

The canon does not expressly require that the decree must be issued in writing. However, since it evidences a singular administrative act done by an executive authority, it must be subject to the universal writing requirement imposed by c. 51. For all such decrees its nature as an administrative act that affects the external forum, which also requires it to be written (cf. 37). Regarding the content and consequences of these administrative acts, certainty and juridical certainty are what lead the legislator to impose, in a binding way, the requirement of writing. Nevertheless, by not expressly stating that the writing requirement is *ad validitatem*, a decree of establishment of a religious house possibly not written will be accepted as valid, though certainly illicit.

The most important rights and duties derived from this establishment are the following:

a) the three that c. 611 sanctions;

b) the faculty to incardinate and unincardinate (incorporate or unincorporate) members;

c) the autonomy and/or dependence that the universal and proper law, especially the latter, confers on the houses;

d) *d* the exercise in the house of all the subjective rights and the fulfillment of religious duties by the members of the house;

e) the practice, in and from the house, of fraternal life in common and the practice of the apostolate by its members;

f) the capacity to be represented and to act in every sector through its lawful representative;

g) the right of indefinite existence in the realm of the legal system in which it was established, that is, the right of not being extinguished except for the causes and by the lawful authorities established in the law;

h) the global and complex obligation, according to the house's ecclesial and religious condition, of duly responding to the true needs of all those incorporated into the house.

3. *The competent authority for establishment* must necessarily be established by the constitutions of each institute. This prescription is, at the same time, a sign of the importance of the house and its superior, and of the autonomy that the institute enjoys in the Church (cf. 586).

The superior must be a superior of the institute in question, and that *ad validitatem*, not from another institute. Nor can he be the diocesan bishop, whose prior consent given in writing, is a mere external condition of the act, although it is *ad validitatem*, as well. The constitutions cannot grant power to persons not belonging to the institute itself.

Within the latitude the norm grants to the constitutions regarding the installation of the competent superior the following principles or criteria supported by tradition and the comparative law of religious can be stated with certainty:

— it must not be a local superior, for that would constitute an aberration endowed with not a few practical impossibilities of acting, and substantial risks of negatively affecting the unity of the institute and of its greater juridical persons;

— traditionally and generally the competency of the general chapters has not applied, for the competence is of an exclusively executive order and not legislative. It would be improper and unrealistic to subject the necessity of establishment to the periodicity of the chapters. The chapters should limit themselves to reporting the great inspiring principles, following those that must motivate the competent superior;

— in all cases it is important that the general superior participate either as the competent authority in the establishment, according to the degree of centralization the development of the institute; or as the confirming authority of the act of establishment carried out by another superior; or by attending to other requirements or questions of permission. Canon 647 § 1 already provides for the establishment of a novitiate house, imposing on the general superior the necessity of obtaining the consent of his council;

— in the universal practice of the cases, the competent superiors are the provincial and similar superiors.

4. *The consent of the diocesan bishop* must be previously obtained by the establishing superior under pain of nullity for the act by which the house was constituted.

A condition for validity is obtaining the decree in writing. Moreover, it is highly beneficial for the interested parties to have this in writing so as to be able to examine and verify the requirements and mutual rights and duties that follow the act of establishment.

That the said consent must be prior clearly shows that it belongs outside establishment properly as such and that establishment cannot be attributed to the bishop.

Only the *diocesan bishop*, within the meaning of cc. 368 and 376, may grant the decree. Therefore, since it does not say *local ordinary*, the vicar general and episcopal vicars are left out, as well as those who could govern a local Church *ad interim*.

The rights inherent to this episcopal consent are explicitly stated by c. 611, although in practice there might be others enumerated.

5. *Establishment of monasteries for nuns*: in conformance with § 2, of the norm, this establishment is subject to the permission, written or oral, given by the Holy See, in addition to and after the requirements of § 1, of the same norm have been complied with.

By *Holy See* is meant the supreme authority described by c. 361. Within the Roman Curia, those *dicasteries* are understood to be competent, pursuant to *Pastor Bonus*, in consecrated and apostolically associated life. Namely this is, the CICLSAL, and the CEP if the monastery were in mission territories in the strict sense.

The norm's only passive subjects are all the monasteries for nuns or women, irrespective of their being entirely or less than entirely contemplative, and never the monasteries for men.

The rationale of this centralization or restriction cannot consist in discrimination by the supreme authority. However, within a measure of preventive care in favor of said monasteries, given their nature and present situation, as well as an aid in realizing the act of establishment as much as possible. It seems absurd to conceive the measure as an establishment intended to prejudice the bishops, for the simple reason that the permission of the Holy See (*requiritur insuper*) does not displace or make futile the necessary consent of the bishop. Nevertheless, the Holy See is bound neither by the granting nor by the denial of episcopal consent.

In practice the Holy See:

a) imposes as a requirement the initial presence of at least eight nuns of whom five must be perpetually professed according to what their form of communal life prudently requires; it also requires their cloister;

b) it requires the prior *placet* of the superior general of the monastery; and *c)* that the members seek and obtain an agreement with the interested diocesan bishop so that, generally speaking, one does not grant what the other might deny.

610 **§ 1. Domorum erectio fit prae oculis habita utilitate Ecclesiae et instituti atque in tuto positis iis quae ad vitam religiosam sodalium rite agendam requiruntur, iuxta proprios instituti fines et spiritum.**

§ 2. Nulla domus erigatur nisi iudicari prudenter possit fore ut congrue sodalium necessitatibus provideatur.

§ 1. In establishing religious houses, the welfare of the Church and of the institute are to be kept in mind, and care must be taken to safeguard everything that is necessary for the members to lead their religious life in accordance with the purposes and spirit proper to the institute.

§ 2. No house is to be established unless it is prudently foreseen that the needs of the members can be suitably provided for.

SOURCES: § 1: c. 496; *LG* 45
§ 2: c. 496

CROSS REFERENCES: § 1: cc. 303, 574 § 2, 578, 607–609, 652 § 2, 722 § 1, 725
§ 2: 619, 670

COMMENTARY

Domingo J. Andrés, cmf.

The norm groups together a series of conditions and purposes that must be established before proceeding to constitute a religious house. Their verification is a matter left to the good judgment of the governing authority, which in the first instance is imposed upon the establishing authority; and in the second, upon the ecclesiastical authorities that must grant their consent or permission thereto.[1]

Their being collected here is done not only with intention of guaranteeing to the house, as a juridical religious person, assurances of existence and stability, but also with an intention of providing a foundation for the dignity of the consecrated who will live there and to the accompanying demands of the religious and pastoral life.

As a whole the canon appreciably betters the parallel norm of the *CIC*/1917.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 69–1.

1. *Imperativity*: it is presented somewhat randomly, not only because it refers to numerous elements to be established, but especially because some of them, as we will soon see, are practically predictions of the future, not easily grasped in the present.

2. *The welfare of the Church shall be kept in mind*: this is an issue of evaluation placed at the vertex of the Churches that will follow, and which was not stated in the analogous canon of the *CIC*/1917. It can be the universal Church, in which community must always occur, all the acts of its faithful. Also it can be the particular church, as a part of the people of God more immediately affected by the phenomenon of the establishment of a religious house. In the first case, the careful consideration of the requirement would fall to the religious superior who is affected more than the diocesan bishop. In the second case, it would seem to affect more, at least from the pastoral point of view, the bishop who has to grant his consent for the establishment of the house.

Welfare (*utilitas*) is a very complex and diversified concept, which must be determined in each case, because it has a certain relativity coefficient. It must be, likewise, confronted with other issues of similar magnitudes. In any case, the question must always be looked at in light of the nature and mission of the Church at any particular time and place, and other necessary considerations must be postponed.

The rationale of the norm lies in the belonging of religious life to the life and holiness of the Church, as well as in the universal, ecclesial, and missionary dimension inherent to consecrated and religious life. For this reason, other possible considerations referring to or that can refer to lesser interests of the institute must take second place.

3. *The welfare of the institute must be kept in mind*: in the enumeration this *welfare* comes after the welfare of the Church, but it is one with the welfare of the Church. The consideration of the institute's welfare is lawfully imposed and the demands derived from its genuine charism and its own ends, seen in a particular time and context, must be addressed.

As such, it is a point of view that affects the establishing religious superior more than the bishop. However, the latter, at least in light of c. 678 § 2, which obliges him to take an interest in the faithfulness of the religious regarding discipline and obedience, cannot consider himself foreign to or disinterested in the necessary welfare of the institute.

Of the institute (in its entirety) from which its members or persons certainly are not excluded and to whose instrumental service the institutions are subordinated. Among which, institutions are the houses in which the members live communal. Nevertheless, due to the express statement that immediately afterwards establishes the norm for these persons, it would have to be considered as preponderantly referring to the exigencies in question: the ends of the institute and its apostolic mission, unity, state of development or regression, etc.

In this sense, it is also now a complex and relative concept that, in any case, never can be understood as justification for pettiness or short-sightedness. This must be the result of an objective zeal for safeguarding the patrimony of the institute, considered in all its components (cf. c. 578) in relation to the place (ecclesially and geographically considered) where the establishment should occur.

4. *Taking care to safeguard the religious life of the members*: as the third requirement, since it is connected in the norm's drafting to the two prior norms, it must be evaluated in harmony with them.

Requirements of the religious life are all those things that a member of the institute must have guaranteed to be able to fulfill the religious life. In this sense the norm could become an endless list, consisting of an enumeration of all the rights attached to profession.

Like the "welfare of the institute," this requirement basically affects the establishing religious superior. However, without forgetting that it should also affect the diocesan bishop by virtue of the cited. c. 678 § 2. Therefore, the possible care of souls they can perform, as well as the public exercise of divine worship, and other works of apostolate can exercise, be done for the benefit of the particular church and without prejudice to the necessary faithfulness to the spirit of the institute.

5. *The end and spirit of the institute*, in conformance with the rules of juridical exegesis and logic, are not a fourth condition or requirement that sums up the three referred-to conditions. Rather it is the fundamental criterion and constant of reference to which the practical evaluation of the other three is prudently subordinated.

In other words, "welfare of the Church," "welfare of the institute," and "requirements of the religious life of the members," are factors that should always agree with "the end and spirit of the institute." This should be the light that shines and that brings harmony to everything else. This light, projected without interruption, and with balance, will prevent misfocusing on any unjust concessions to one factor to the prejudice of others.

Possibly, and for explainable reasons, this point of view must be kept more in mind by the bishop than by the superior. The end and spirit of each institute radically conditions the ecclesial service that an institute is prepared to afford a specific particular church. It will be necessary, in practice, to have a detailed knowledge of the constitutions so as to discover in them a reasonable way of harmonizing the welfare of a specific particular church with the institutional possibilities of a possible religious family that wishes to be founded in that Church.

6. *The needs of the members* (§ 2), constitutes the last requirement that the norm submits to the consideration of the interested parties in act of the establishment of a religious house.

A possibly inevitable repetition is observed here, such that the total realization of religious life, guaranteed by the preceding requirement, can consist precisely in the suitable satisfaction of the needs that a religious has for being such. But by keeping the terms of the norm in mind as well as its being placed in a separate paragraph, it can be concluded that the legislator has wanted to allude especially to the *material* necessities of the member, within the whole of all the requirements of religious life.

They can be enumerated in this way:

a) material necessities such as healthful and worthy living quarters, though humble and modest; frugal support, the product of work without an excessive toll on health; free time for recovering of strength; fixed direct economic compensation, insurance, etc.; and

b) all of this in the broadest context of the whole of the needs of the religious life, to whose satisfaction every institute must respond pursuant to c. 670.

When the norm invokes prudence, it is obvious that it is not talking about statistics or mathematics in prediction. It is sufficient to evaluate carefully all the concurrent circumstances, without trying to foretell the future; likewise, a prediction of the near future is sufficient since anything more would exceed the powers of any prudent person.

As for sources in foreseeing how to respond to the preponderantly material necessities, this norm, since it does not give specific instructions, shows itself to be much more flexible than its parallel norm in the *CIC*/1917. Nevertheless, it should not be forgotten that, from experience and consistent commonly held opinion, each house must look to take care of itself with its own means. Thus it can respond with a certain autonomy in meeting its own needs, not the least of which, certainly, is to contribute with its resources to the common works of the institute and to the internal and external distribution of its goods.

611 **Consensus Episcopi dioecesani ad erigendam domum religiosam alicuius instituti secumfert ius:**

1° vitam ducendi secundum indolem et fines proprios instituti;
2° opera instituto propria exercendi ad normam iuris, salvis condicionibus in consensu appositis;
3° pro institutis clericalibus habendi ecclesiam, salvo praescripto can. 1215, § 3, et sacra ministeria peragendi, servatis de iure servandis.

The consent of the diocesan bishop for the establishment of a religious house carries with it the right:

1° to lead a life according to the character and purposes proper to the institute;
2° to engage in the works which are proper to the institute, in accordance with the law, and subject to any conditions attached to the consent;
3° for clerical religious institutes to have a church, subject to the provisions of can. 1215 § 3, and conduct the sacred ministries, with due observance of the law.

SOURCES: 1°: *CD* 35: 2; *MR* 9c, 28, 52
2°: c. 497 § 2
3°: cc. 497 § 2, 1162 § 4

CROSS REFERENCES: cc. 102 § 2, 103, 312 § 2, 368, 376, 578, 588 § 2, 607 § 3, 608–610, 612, 677 § 1, 708, 765, 934, 936, 1214–1222, 1266

COMMENTARY

Domingo J. Andrés, cmf.

The meaning of this norm does not consist in dictating the juridical effects that follow episcopal consent because such effects are included in the possibility of proceeding to the establishment of the house. Nor does it establish the effects of the founding of the house, for, inasmuch as they are rights, they exist before the constitution of the house and the obtaining of the consent to establish the house.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 72–75.

The norm enumerates four rights in the institute's favor, whose exercise will be lawfully possible after its having obtained consent and after having carried out the establishment of the house. Consent does not create these prior rights, nor can it encroach on their exercise. The list is directed to the bishop so that in view of these stated rights, he will rationally and with specific knowledge of the matter either grant his consent or deny it. Because if the house is not suitable for his diocese then he will place limitations on the exercise of those rights.

1. *The right to lead a life according to the character and purposes proper to the institute*: in relation to the *CIC*/1917, this right is new and is guaranteed without distinction to all institutes.

It is a right and an obligation at the same time. Therefore it cannot not be renounced by the institute and may not be modified in its essential meaning and scope by the bishop who has a specific responsibility for it (cf. c. 678 § 2).

It primarily and directly addresses the character and ends proper to the institute. It secondarily and derivatively, addresses the character and particular ends of the house whose establishment is solicited. Such character and ends must be shown to be substantially in accordance with those of the institute and must be declared in the application for consent directed to the bishop.

The idea of "ends," in plural, cannot be the traditional idea of "primary end," in which agreement between all the institutes exists. However, the idea that the works and expressions that are translated factually, at a given moment, are the primary, essential, and common end. On the other hand, the concept of "character culminates in the classification of the institutes as clerical-lay, apostolic-contemplative, masculine-feminine, diocesan-pontifical, etc., according to the criterion that is used to diversify them. Character, seen comprehensively, would be the whole or the sum of these characterizing features of the institute, specifically those that define the institute.

2. *The right to engage in works proper to the institute*: somewhat reiterative, as long as one accepts the aforementioned concept of "ends." The legislator has considered it appropriate to mention expressly the particular works that the each institute carries out, as an expression of its mission and identity. I consider that, while the mission may not be modified or limited, the works through which it is realized can be adapted to the space-time context of each institute. It is all that can be concluded from the provisions of c. 677 § 1, when by suggesting the prudent adaptation of the works proper to the institute, it mentions "new and appropriate means" to realize them. The works spoken of here can be identified with what traditionally has been denominated "specific and special ends," generally enumerated in the constitutions immediately after the unique end, usually denominated "ultimate or essential or primary end."

In accordance with the law, is a technical and generic phrase to which the works themselves must be subordinated, meaning the universal law (cc. 608–610 and 673–683), and thus the law of each institute, which is subordinated to the universal law.

Subject to any conditions, must not be understood as always and necessarily meaning that every bishop must impose conditions: perhaps by saying "conditions, *if any,*" the reality of the matter would have been better reflected in the canon. Nevertheless, the phrase clearly suggests that the bishop is able to or has the faculty to place conditions on the exercise of the works of the institute. So long as he does so, it is important to remember the objective limits to which the conditions are subject:

— only in his particular church and in special cases can the bishop inhibit the right to exercise works proper to the institute;

— never may he totally hinder all the institutes in such exercise;

— he can restrain the exercise of all works or limit some as long as the institute can express its identity and mission through other means proper to the same, or it can accept the restriction;

Obviously the institute will always have the freedom to accept the conditions imposed by the bishop or to not accept them by not establishing a house.

3. *The right to have a church,* limited and guaranteed to only the clerical institutes, both of pontifical right and diocesan right. In certain cases, keeping in mind the composition of some communities as well as their ends that are not directly clerical, the institute could renounce the exercise of this right.

The justifying rationale for this right lies in the constitutive definition of the clerical institute provided in c. 588 § 2. As such, a clerical institute would see its mission minimized without worship, sacraments or liturgy, which must be the fundamental reason for having a church.

The *proviso* cited by the norm ("save the prescription of can. 1215, § 3"), means that, in the consent to have a church, does not include the discretional faculty to locate it any place in the diocese (or not even in a city). Thus, to put it in one place and not in another, pursuant to the above-referred canon, a new episcopal consent is needed, distinct from the prior consents for the establishment of the house and its founding.

Important positive canonical determinations that affect the exercise of this right can be found in cc. 765, 934, 936, and 1226.

4. *The right to conduct the sacred ministries* need not be exercised in the church, although fundamentally it must be done.

Clearly distinguished by the norm, this right must be taken in the strict sense of "sacred ministry," and not by including lay ministry or ministries. Only those directly dependent and derived from the sacrament

of holy orders, and logically, this is guaranteed only to the clerical institutes.

Servatis de iure servandis should be understood as referring to, besides the norms of cc. 1214–1243, to those in conformance with cc. 673–683 (apostolate of religious), and 834–1253 (sanctifying function of the Church) regarding the universal law. Regarding the proper law, certainly alluded to by the phrase, the possible determinations in the constitutions and directories of the institutes regarding the exercise of the minister, especially in the liturgical field, must be kept in mind.

612 **Ut domus religiosa ad opera apostolica destinetur diversa ab illis pro quibus constituta est, requiritur consensus Episcopi dioecesani; non vero, si agatur de conversione, quae, salvis fundationis legibus, ad internum regimen et disciplinam dumtaxat referatur.**

The consent of the diocesan bishop is required if a religious house is to be used for apostolic works other than those for which it was constituted. This permission is not required for a change which, while observing the laws of the foundation, concerns only internal governance and discipline.

SOURCES: c. 497 § 4

CROSS REFERENCES: cc. 368, 376, 586 § 1, 587 § 1, 593, 608–611, 617–672, 677, 678 § 2, 680, 683, 708

COMMENTARY

Domingo J. Andrés, cmf.

The norm regulates only two types of changes in the religious house: the first refers to apostolic works and the second to internal governance and discipline. Limited to these two possibilities of change, this regulatory decision is clear and rational. It is completely in conformance with the power of the bishop in this regard, as it appears in the regulations of, among others, cc. 609, 611, and 678–683, and with the consequences derived from the principles of autonomy and of exemption in favor of the institute to which the house belongs.[1]

Nevertheless, in practice the religious house can undergo various other transformations, which are types of these two changes that are somewhat less well defined and less easily resolved. We will point out a few of these at the end of the commentary.

1. *Undertaking apostolic works different from the foundational works*: they can be apostolic works proper to the institute, defined as such in its own law and which, by having the right to realize them pursuant to c. 611,2.° Therefore, the bishop, on granting his consent to establish the house, has accepted that such work would be carried out. Or they can be works entrusted by the bishop to the house through a written agreement stipulated in c. 681. For both cases, the normative solution is identical and indisputable: a new consent is required from the bishop.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Códgio* (Madrid-Rome 1984), pp. 75–77.

The rationale for the decision is that there is a change in the works for the exercise of which the house was established, namely, those apostolic works that were the end and formal cause of the house's constitution. Moreover, this change of undertaking results in being a transformation proper of the house itself and must proceed as a new establishment, although the house might materially remain the same with the same members.

The decision encompasses only apostolic works, exactly those that c. 678 § 1 subjects to the power of the bishop. It does not encompass other kinds of non-apostolic works and activities, internal to the community, that do not signify another purpose for the house and that are not different, but that can be akin or related to those for which the house was constituted. Regarding the latter, the norm is silent since they are outside its scope. They must be dealt with through the power that is referred to the bishop, utilizing other general principles, elucidating in each case the extent to which such works affect the constitution and structure of the house.

2. *Changes in internal governance and discipline*: in contrast, the norm does not require the consent of the bishop when transformations in the religious house have taken place that are merely internal and only affect governance and discipline but preserve the laws of the foundation. That is, they have no bearing on the subject matter of the constitutive or foundational ends.

The rationale for this decision consists in that governance and discipline are immediately and exclusively subject to the Apostolic See by c. 593, and it is not important, if it is only regarding governance or discipline, if there is a conversion of ends that affects the constitution of the house on the condition that, in this case, the laws of the foundation are preserved.

The fundamental bloc of norms that regulates governance is constituted by cc. 617–640. While concerning discipline, the norms are set out in the formative bloc (cf. cc. 641–661), the bloc of most of the rights and obligations (cf. cc. 662–672), and the other norms dispersed both in the Code and especially the proper laws.

3. Regarding the *meaning of the "laws of the foundation,"* or fundamental laws, they are not the laws of foundation of the institute, but of the house in question. Substantively they include:

a) cc. 608–611, with the practical consequences derived from them;

b) the decree of establishment in its apostolic projection, the subject matter of which must remain stable;

c) the conditions that perhaps the bishop might have imposed when he gave his consent and which must be respected;

d) other bonds, not concerning the bishop or superior, that perhaps might have encumbered the house upon its construction.

If there effects arise which are directly provoked by the change that substantially disrupt one of these laws, or that clearly exceed the concepts of governance or discipline, one should at least pose the questions of the necessity of another intervention by the diocesan bishop. In practice, many mixed situations will appear to have no easy solutions and therefore will require a good dose of understanding by both parties.

4. *Some material changes*, in addition to those changes referred to at the beginning of the commentary, which can cause difficulties or doubt regarding the necessity of the bishop's intervention. Then it follows that it is important not to forget that the legislator has considered sufficient a dual norm referring to *formal* modifications and modifications *of ends*, and that other *material* modifications can exist, following those that become or can become implied transformations of the end of the house.

a) *Material modification of the house*: as a principle and in the abstract, every extension, remodeling, or reconstruction of a house does not require the consent of the bishop, for they do not affect the foundational ends and, in themselves, they cause no repercussion on the works of apostolate.

But there must be excepted from this principle modifications regarding the church or public oratory, for they can neither be destroyed nor rebuilt; nor may they provisionally or permanently be put to profane uses without the consent of the diocesan bishop (cf. cc. 1215 § 1 and 1222). However, without the intervention of the bishop, the liturgical regulations regarding the decorum and dignity of the sacred place can suffer alterations in their observance.

A fortiori, if modifying the building means to create, extend, or destroy spaces for the apostolate, it is subject to episcopal inspection pursuant to c. 683, and may not proceed without the approval of the bishop.

b) *Transfer of the building*: referring only to the material building, since for a new location of the church the above-mentioned c. 1215 § 1, applies, the following two cases can be distinguished:

— if it constitutes an occasion to change the canonical configuration of the house by changing a foundational end, the intervention of the bishop is needed twice: the first time because it is a transfer equivalent to a de facto suppression, which, to carry out, the bishop must be *consulted* (cf. c. 616 § 1); the second time, the bishop must intervene by giving his consent to a new foundation in a different place (cf. c. 609 § 1);

— if, on the other hand, the transfer in no way affects the canonical configuration of the house, its foundational laws, or the apostolate, which in practice can hardly occur, then the consent of the bishop would not be required.

613 **§ 1. Domus religiosa canonicorum regularium et monachorum sub proprii Moderatoris regimine et cura sui iuris est, nisi constitutiones aliter ferant.**

§ 2. Moderator domus sui iuris est de iure Superior maior.

§ 1. A religious house of canons regular or of monks under the governance and care of their own Moderator is autonomous, unless the constitutions decree otherwise.

§ 2. The Moderator of an autonomous house is by law a major Superior.

SOURCES: § 1: c. 488,8°; SpC VI § 1,1° et § 2,1°
§ 2: c. 488,8°; SpC VI § 1,2°

CROSS REFERENCES: cc. 587 §§ 1–3, 608, 615, 616 § 3, 620, 667 §§ 2–4, 684 § 3

COMMENTARY

Domingo J. Andrés, cmf.

Together with the three following norms (cf. cc. 614–616), this norm claims for the house *sui iuris* the status of autonomy that for centuries has contributed to their functioning so magnificently. Very much by way of synthesis, this group of norms provides for the name, essential concept, ability to be associated with an institute for men, relations with the diocesan bishop, and the suppression of houses *sui iuris*.

One should observe that there are quite a few special features underlying these succinct norms that could go unnoticed in a superficial reading.[1]

1. *Names*: to designate houses *sui iuris*, from the beginning and most commonly even today, canons regular use the terms *canonical* or *canon*. Monks and nuns, on the other hand, use the term *monastery* or *abbey*. Correlatively, to designate the moderators or superiors of the former, canons regular employ *head* or *major*; but monks and nuns use the terms *abbott* (*abbess*), *prior* (*prioress*), *vicar* or *major*, according to the difference in tradition and proper law.

The use of these and other beautiful titles should not be subject to absolute regulation for the simple reason that they belong to the tradi-

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), p. 67.

tional richness and the patrimony of the canons regular and of the monastic life. The Code, by limiting itself to the generic names of "moderator" and "superior" should not give one the impression that the denominations given to us by tradition must be made completely uniform.

2. *Concept of a house "sui iuris,"* can be defined as the particular religious house of canons regulars and monks and nuns, which by universal and proper law enjoy due autonomy and internal independence in regard to the following:

a) the remaining houses that make up the Order, autonomous or not, for not all of them necessarily need to be autonomous;

b) the possible, although not frequent, intermediate bodies that can exist under varying titles, which come between the particular house and the supreme governance;

c) this supreme or general governance, whose moderator, also known by different names, is simultaneously the local and major superior, by virtue of both the proper and universal law (cf. c. 620).

These are precisely the three described dimensions of autonomy that imply, as an intrinsic requirement, the inescapable fact that the superior has to be primarily and fundamentally, the local superior. At the same time, he must possess the great majority of the major superior's faculties and obligations pertaining to individual service. Otherwise, autonomy as such could not be sustained, nor could he fulfill the responsibilities limited to the locale and the community that lives there, which precisely justify such autonomy.

3. *Autonomy and its grades*: autonomy is local, that is, it fundamentally concerns internal governance of the house and from that viewpoint it is imposed on the rest of the houses, possible intermediate organizations, and on the supreme governance.

Every house *sui iuris* becomes practically an institute in miniature, a local religious community with all its implications, constituted as an autonomous house in that very ambit. This does not mean that a group of autonomous houses cannot have the same founder, belong to the same branch, or have a greater unity that presides over their autonomy and union. However, this union is always thought of and structured as a classification essentially following the defining autonomy of the local entities called houses *sui iuris*.

This autonomy has grades that are very much differentiated, in conformity with the experience and tradition of each Order to which the house belongs. It is not possible to describe here these grades, because, in practically all of the cases, one would have to consult the proper law of each house. This would result in a list with entries as varied as are the houses *sui iuris*.

Nevertheless, it can indeed be maintained that, in addition to these grades, the following are not opposed an autonomous nature:

a) neither the full subordination of their members to the Roman Pontiff (cf. c. 590);

b) nor their common subjection to the diocesan bishops; in fact there exist autonomous houses belonging to nonexempt religious institutes and to institutes of diocesan right, similarly autonomous;

c) nor, in the case of feminine monastic autonomous houses, the fact of their possible and not infrequent annexation by and partial dependence on a masculine regular superior;

d) nor the almost always universally existent federations, unions, associations, etc., among autonomous monasteries of the same tree, family, or founder;

e) nor, finally, the figure of religious assistants that, precisely in view of the risks of isolation that one type of autonomy represents to so circumscribed by a place and a community, the Holy See establishes for autonomous monasteries of nuns.

These houses become like islets of an archipelago that share the exact same water but different land. There is no sharing of goods, personnel, or activities, among these houses. Each house can admit, form, and rid itself of the candidates who aspire to live there. Above the superior of these houses there is no other superior as there is a provincial superior over every local superior in an active modern institute.

4. The rationale for autonomy lies in that religious profession, which is made and lived in a house of this genre, is already, in itself, an exercise of ministry. The incorporation into the house, cloister, contemplative life, the stability of the professed, apostolic expressions, etc., are values that inherently demand the autonomous governance of the house.

The local concentration of an entire multiple system of governance, formation, work, etc., from the beginning of religious life until its culmination. As such, it prevents the persons from squandering their efforts, invites them to consider the existential seriousness of their commitment, and causes the communities to be configured in the manner of large families. This creates intimate and intense bonds between these persons and the affairs of their communities, and provides an enormous amount of assistance to each individual member.

Although they possess these inherent advantages, *sui iuris* houses are not exempt from risks or limitations. This can explain why their numbers have grown so slowly in comparison to houses with systems of centralized religious life, in which systems the practice of conceding autonomy to provinces or discreet groups of houses, not to individual houses, is established and decidedly practiced.

5. *The major-local superior* might be perhaps the least variable feature, most intensely differentiating of the houses *sui iuris*, and most universal to them.

Inasmuch as the person is a *superior*, all the universal canons applied without distinction to all superiors apply as well. Since he or she is a local superior, all the canons that the law applies specifically to superiors of the houses apply. Since he or she is a major superior, those canons that the law applies to the provincial and comparable superiors apply, as well as some that apply to supreme moderators. Finally, since he is an ordinary, if it is a clerical institute of pontifical right, those canons, which universal law applies to such institutes, apply also to these.

This superior can lack a faculty or duty that the universal law attributes to the major superiors and *a fortiori*, to the supreme moderators. He can hold an office other than one that is not properly a superior's which can be subordinated regarding certain bonds and dependencies. But his essential character of being simultaneously a local and major superior always remains intact.

An extraordinarily singular example, and perhaps unique in all the history of religious life and in its comparative law, is the exceedingly famous Abbey of Casamari (Italy). This is the mother- house for the Cistercian monastic Congregation of the same name, whose abbot unites in his physical person the offices of local superior of the aforementioned *sui iuris* monastery, Supreme moderator of the monastic Congregation, major superior and ordinary of the abbey and of the Congregation, and superior visitor of the monastic Congregation.[2]

2. Cf. S. PACIOLLA, *Statuto dell'ufficio dell'Abate di Casamari. Studio giuridico-sistematico* (Rome 1992), p. 222.

614 **Monasteria monialium cuidam virorum instituto consociata propriam vitae rationem et regimen iuxta constitutiones obtinent. Mutua iura et obligationes ita definiantur ut ex consociatione spirituale bonum proficere possit.**

Monasteries of nuns which are associated with an institute of men, have their own rule of life and governance, in accordance with the constitutions. The mutual rights and obligations are to be defined in such a way that spiritual good may come from the association.

SOURCES: cc. 500 § 2, 506 § 2, 525, 527, 529, 533 § 1,1°, 534 § 1, 549, 580 § 3, 603 § 2, 611, 645 § 2, 647 § 1, 652 § 2, 1338 § 2; SpC VI § 2,2° et 3°; § 3; CodCom Resp. I, II, IV, 24 nov. 1920 (*AAS* 12 [1920] 574–575)

CROSS REFERENCES: cc. 587 §§ 1–3, 616 § 4, 628 § 2, 630 § 3, 638 § 4, 667 §§ 3–4, 668 §§ 4–5, 674, 684 § 3, 699 § 2, 1192 § 2

COMMENTARY

Domingo J. Andrés, cmf.

This norm regulates only the phenomenon of the association of monasteries of nuns to an institute for men. It does it in an appropriate context, for the association can have effects on the autonomy of such monasteries, with extreme moderation and precision, to the point that one runs the risk of not even perceiving the meaning and scope of the norm.[1]

1. *Meaning and scope*: taking the historical facts of this associative phenomenon as a point of departure, the norm contemplates four aspects:

a) the maintenance of a particular way of life and governance by the monasteries that are associated with an institute of men;

b) this particularity must be described almost in terms of total discretion and autonomy in the constitutions of each monastery that intends to become associated or wants to revalidate its prior association;

c) from such association arise mutual rights and duties between the monastery and the associating institute;

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 79–81.

d) without losing their nature as such, these rights and duties must benefit the spiritual good of the parties, especially that of the associating monastery.

2. *The monasteries of nuns* are suitable subjects for association and are the only entities contemplated by this norm. Possibly "monastery" is the most appropriate and most used word, but others are not excluded, like for example, *convents, fraternities, houses*, etc.

The term *nun* utilized in the norm is characterized by the following essential elements:

a) solemn vows cf. (c. 1192 § 2);

b) papal cloister (cf. c. 667 §§ 3–4);

c) autonomy of the monastery in which they live (cf. c. 613);

d) choir and completely contemplative life.

Therefore, this norm does not contemplate other possible manners of association between monasteries for women, or between monasteries for men. Nor does it distinguish between houses of sisters or women religious and an institute for men, between monasteries of ordinary cloister or without solemn vows and an institute of men or of women, or between non-autonomous monasteries, not entirely contemplative, and an institute of men.

3. Both the historical and present rationale for this type of association are manifold and tend toward the same ends. They are also very revealing, on the whole, of the mind and intention of the Church in maintaining such an association. These reasons can be summarized by the following list:

a) protection when faced with involuntary doctrinal or moral errors;

b) regulatory moderation of the expansion of such associated monasteries;

c) protection, even material and economic—much more necessary in other times;

d) especially necessary spiritual and educational aid; and

e) intervention of the Holy See by means of the associating order or institute in some important issues, like admissions, professions, dismissals, relations with local ordinaries, and governance.

4. The essential concept of *association*: the legislator has expressly employed a generic term to indicate the minimum of a subordinated connection on some points.

a) The association *does not consist* in a *union*, according to which there must flow as an effect, a new and unique institute, distinct from the two preceding institutes. Nor does it consist in a *federation of monasteries*, not only because the associating institute need not necessarily be a

monastery, which is rarely the case, but because from such a federation flows a collegial moral person of pontifical right, both in its origin and in the authority on which it depends. This has nothing to do with the phenomenon regulated here, among other things, because it hardly causes important consequences in the governance and style of life of the associated entities. It does not even consist, in the end, in an aggregation in the strict sense, through which an order allows a share of its own goods to go to a related religious congregation. Nor, of course, does it consist in a fusion by which an institute is founded in another by which it is absorbed.

b) *It consists,* on the contrary, of a juridical act, the product of an ongoing agreement generally between the conventual chapter of the associated monastery and the superior general. This with at least the consent of the council; an agreement by which a monastery of nuns freely associates itself with an institute of men, with whose charisma and spirituality it possesses related objectives that justify the associative act, the act being approved by the Holy See.

5. *The function of the constitutions in the association*: given the importance and the consequences for the associated monastery derived from said act, it is necessary that the act of association be recorded in the associated monastery's constitutions (but not necessarily in those of the associating monastery). This record in the constitutions is the best guarantee of the importance of the act and of the stability the act itself requires.

The constitutions must contain an enumeration of the mutual rights and duties, especially those that bear on the life and governance of the monastery. Among them the most notable and complex is sometimes that the superior of the men's institute have true jurisdiction or power, in some exhaustively defined points, in the associated monastery. It is a concessionary power defined by the constitutions of the monastery.

It is not possible to transcribe here a representative list of these rights and duties; but as a source supremely indicative of the generality of the cases of association, for their traditional weight and their being in effect immediately prior to the *CIC*, we can cite, among others, the following canons: 525, 527, 529, 533 § 1,1°, 534 § 1, 549, 580 § 3, 603 § 2, 611, 615, 645 § 2, 647 § 1, and 652.

615 **Monasterium sui iuris, quod praeter proprium Moderatorem alium Superiorem maiorem non habet, neque alicui religiosorum instituto ita consociatum est ut eiusdem Superior vera potestate constitutionibus determinata in tale monasterium gaudeat, ad normam iuris peculiari vigilantiae Episcopi dioecesani committitur.**

If an autonomous monastery has no major Superior other than its own Moderator, and is not associated with any institute of religious in such a way that the Superior of that institute has over the monastery a real authority determined by the constitutions, it is entrusted, in accordance with the norms of law, to the special vigilance of the diocesan bishop.

SOURCES: cc. 500 § 2, 506 § 2, 512 § 1,1°, 525, 534 § 1, 535 § 1, 549, 580 § 3, 603 § 1, 615, 645 § 2, 647 § 1, 652 § 2

CROSS REFERENCES: cc. 368, 376, 587 § 2, 590, 620, 625 § 2, 594, 628 § 2, 1°, 630 § 3, 637, 638 §§ 3–4, 667 § 4, 684 § 3, 688 § 2, 699 § 2

COMMENTARY

Domingo J. Andrés, cmf.

The norm intends to avoid the species of independent islets that, in the present organizational scheme of religious life, would correspond to the class of monasteries described by the canon.[1]

1. *Scope*: the legislator avoids possible isolationism and errors perhaps lethal to the monasteries referred to by the norm by entrusting them to the special and immediate vigilance or care of the diocesan bishop.

In view of the final decision of entrustment, it has been considered, and therein lies the justification or rationale for the norm, that the following facts these monasteries may have in their favor are not sufficient to guarantee ecclesial communion and growth as well as their due insertion and belonging to the whole of religious life inasmuch as it is articulated by the identical general principles of unity and subordination:

a) the approval of their constitutions by the Holy See (cf. c. 587 § 2);

1. F.R. DE PASCUAL, "A propósito de los cánones 613, 614 y 615 del CIC de 1983," in *Commentarium pro Religiosis et missionariis*, 73 (1992), pp. 307ff; D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 81–82.

b) their further dependence on the same (cf. c. 590);

c) a generic dependence on the local ordinaries, which only refers to the area of subordination established by c. 678 § 1;

d) their federation with other similar monasteries and their consequent subjection to the advantage of the religious assistant appointed by the Holy See, to the chaplain, etc.

For the same reason, by not considering sufficient all of these elements of this more or less distant dependence on the Holy See and on bishops in general, the legislator decrees in the present norm the subjection of these non-associated monasteries to a special, immediate vigilance of each bishop of the particular church in which they are established.

This bishop upon whom they depend is determined pursuant to cc. 368 and 376. The local ordinaries, if in fact they exercise any vigilance, can only do so through entrustment or delegation by their diocesan bishop.

2. *The two defining conditions* of these monasteries are the following:

a) not having another major superior over their own local superior, who is also a major superior, endowed with a certain jurisdiction in the strict sense over the monastery;

b) not being associated with any institute for men, pursuant to the norm of c. 614.

Both conditions must be present simultaneously because without one of them the monastery would not be within the scope of the present norm. But this seems to be an exegetical theory that strictly follows the text of the law. If it is kept in mind, nevertheless, that in the reality of the matters and cases of those monasteries, it is not possible (or, it would be absurd) to have another major superior without its being associated with an institute to which he belonged, and that the real scope of the possibility of association established by c. 614 entails that the constitutions of the monastery grant the supreme Moderator of the associating institute sufficient faculties and special duties of a major superior, it can be concluded that the original Latin expression of the norm is not the best of all the possibilities.

3. The content of the *special vigilance* of the bishop is limited in the norm by the phrase "ad normam iuris," and it turns out to be subtly exact and incisive because it deals with the following:

a) the norm existing in the proper law of the monastery, namely, the constitutions and other directories, in which these monasteries voluntarily and freely usually grant the bishops more prerogatives and faculties than would be required by the universal law. However, on occasion this confuses the functions of a regular superior with those of a bishop, that is,

giving to the latter faculties that customarily and traditionally pertain to the former;

b) the norm existing in the universal law which, tradition and extra-canonical pontifical documents aside, by following the *CIC*, states in cc. 594, if one allows equivalency in treatment of these monasteries with institutes of diocesan right, as some support (628 § 2,1°). This is regarding the following: canonical visitation, 630 § 3, confessors, 637, rendering of accounts in administration of goods, 638 §§ 3–4, alienation of temporal goods, 667 § 4, to cloister, 684 § 3 transfer to another monastery, 688 § 2, confirmation of the indult of dispensation for temporal vows, and 669 § 2 the dismissal of those temporarily and perpetually professed.

Fundamentally, it can be maintained that the special character of the vigilance of the diocesan bishop over the non-associated monasteries and those that lack an external major superior consist in the development of certain powers that, apart from the constitutions of the monastery, are conferred on him by the *CIC*, regarding the areas of spirituality, economics, cloister, and separation from the monastery: powers that, all in all, should make up the principal topics the bishop must deal with during his obligatory canonical visit to the monasteries.

616 **§ 1. Domus religiosa legitime erecta supprimi potest a supremo Moderatore ad normam constitutionum, consulto Episcopo dioecesano. De bonis domus suppressae provideat ius proprium institutis, salvis fundatorum vel offerentium voluntatibus et iuribus legitime quaesitis.**

§ 2. Suppressio unicae domus instituti ad Sanctam Sedem pertinet, cui etiam reservatur de bonis in casu statuere.

§ 3. Supprimere domum sui iuris, de qua in can. 613, est capituli generalis, nisi constitutiones aliter ferant.

§ 4. Monialium monasterium sui iuris supprimere ad Sedem Apostolicam pertinet, servatis ad bona quod attinet praescriptis constitutionum.

§ 1. After consultation with the diocesan bishop, a supreme Moderator can suppress a lawfully established religious house, in accordance with the constitutions. The institute's own law is to make provision for the disposal of the goods of the suppressed house, with due regard for the wishes of founders or benefactors and for lawfully acquired rights.

§ 2. The Holy See alone can suppress the sole house of an institute, in which case it is also reserved to the Holy See to prescribe concerning the property of the house.

§ 3. Unless the constitutions enact otherwise, the suppression of the autonomous houses mentioned in can. 613 belongs to the general chapter.

§ 4. The suppression of an autonomous monastery of nuns pertains to the Apostolic See; the provisions of the constitutions are to be observed concerning the property of the monastery.

SOURCES: § 1: cc. 498, 1501; *ES* I: 34; *AIE* 2°
§ 2: cc. 493, 498, 1501; *PC* 21
§ 3: *ES* II: 41
§ 4: *PC* 21; *ES* II: 41; *AIE* 2°

CROSS REFERENCES: § 1: cc. 123; 368; 376; 584; 585; 587 §§ 1–3; 616 § 2; 622; 1299–1310
§ 2: cc. 123; 360–361
§ 3: cc. 587 §§ 1–3; 613; 615; 630 § 3; 631; 637; 638 § 4; 667 § 4; 684 § 3; 686 § 2; 688 § 2; 699 § 2
§ 4: cc. 360–361; 584; 587 §§ 1–3; 628 § 2, 1°; 630 § 3; 638 § 4; 667 § 3; 668 §§ 4–5; 684 § 3; 699 § 2

COMMENTARY

Domingo J. Andrés, cmf.

Having already treated the suppression of an institute (cf. c. 584) and its parts or larger organizations (cf. c. 585), the Code now regulates the suppression of a house both in the strict sense and in its principal types.[1]

1. *Scope*: in each case of a different house, the canon limits itself to focusing on three points:

a) the competent superior;

b) the essential conditions; and

c) the disposition of goods.

The norm says nothing about the consecrated persons incorporated into the suppressed house, nor about the just or grave causes that would have to exist to cause suppression, nor about the subsequent effects, or about other possible particulars that, for the same reason, are relegated to the proper law.

Among these latter, so as to understand the spirit and moderation behind the norm, the following criteria, manifestations of the mind of the Church, must be taken into account: not to proceed in haste and not to forget the universal and local ecclesial point of view, as far as the competent superiors are concerned; and understanding and flexibility on the part of the local ordinaries, in view of those unforeseeable situations that leave institutes with absolutely no choice but to proceed with their suppression of houses (cf. *ES* I, 34).

In relation to the *CIC*/1917, this matter has been notably simplified, its subjects unified, and recognition made of the autonomy of the institutes.

2. *The general norm* is contained in § 1, and it is applied only to houses in the strict sense (cf. cc. 608–611). Moreover, after consultation with the diocesan bishop, not the local ordinary, every suppression is brought about by the superior general in conformity with the provisions contained in the constitutions.

This general norm, except where it might be expressly modified in a particular aspect, must be kept in mind in the cases of suppression regulated by the paragraphs that follow.

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1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 83–86; idem, "La supresión de los Institutos religiosos. Estudio canónico de los datos más relevantes," in *Commentarium pro Religiosis et Missionariis* 67 (1986), pp. 3–54.

The *superior general* has a faculty conferred by the law itself with the exclusion of competence for the rest: other major superiors, other assemblies, and the diocesan bishop even though the institute might be of diocesan right.

Prior consultation with the diocesan bishop, distinct from consent or permission, is obligatory for and binding on the competent superior; keeping in mind that, as is proper to a consultation, the superior is bound to bring it about but need not follow the response of the bishop. Since the universal law has made uniform the preceding practice and norm in consultation, it would be improper for constitutions to attribute the faculty of consent or permission to the bishop.

The *constitutions*, inasmuch as they are the principal code of life (cf. c. 587 § 1), must regulate suppression in some way. It is a matter of the highest gravity that affects the structure of the institute, its subjective rights, the duties of those incorporated into the house, and the pastoral structure of the particular church. Issues to be regulated by the constitutions can be the following:

a) the lawful causes for suppression;

b) under what conditions the superior general can proceed, since there can be a vote of the council, chapter criteria, etc.;

c) a pre-chapter and post-chapter period in which the procedure for suppression may or may not take place;

d) the disposition of goods even though this may be stated in other norms.

The *disposition of the goods of a suppressed house* must leave intact, inasmuch as they are criteria superior to the provisions of the proper law in this regard:

a) the wishes of the founders or donors, if any, for which considered and detailed regulation is established in cc. 1299–1310;

b) the rights lawfully acquired by third parties, by the house itself, by its incorporated members, etc. No one should be unjustly prejudiced because of the suppression; nor can suppression be utilized to elude acquired duties of justice.

When the proper law does not provide for the disposition of the goods, which occurs more often than is desirable, then c. 123 must be applied. That is, they will pass to the juridical person, who by law, is immediately superior to the house and to the province of the institute, if any, or to the institute under the direction of the general governance.

3. *Suppression of the only house of an institute* (§ 2) (it can be the only house by virtue of being the last one after all the other houses have been suppressed or extinguished, or for being the first house before others have been established). The reservation of competence granted by the

norm in favor of the Holy See, or the dicastery of the Roman Curia on which the institute in question might depend, finds its rationale in that, in practice, this suppression is practically the suppression of the institute itself, in which case c. 584 should apply, whose content is the same as that of the present decision. Although the canon does not mention it, the Holy See must and does observe the two provisos of § 1.

Nevertheless and pursuant to law, even if the last house is suppressed, the institute still remains standing, for its juridical personality cannot be confused with or exhausted by one of its houses, although it might be the last house. Neither can all the elements that form this personality be reduced to the personal substrate (its members) of the juridical person. On the other hand, even if they are dispersed and without any house, the professed, the last ones, could and will have to continue being professed of the institute.

4. The suppression of an autonomous house (§ 3) is entrusted to the competence of the general chapter defined by c. 631. An *autonomous* house (*sui iuris*) is defined by c. 613.

The chapter in question is not the local chapter of the canonate or of the monastery, but the general chapter of the entire order or of the entire monastic congregation to which the house of canons regular or the monastery respectively belongs.

The constitutions, bound by the norm to regulate suppression, can contain in this regard provisions similar to those we have previously suggested with respect to the general norm of § 1. Likewise, the constitutions must also respect the possible acquired rights of third parties and the wishes of the founders and donors, if any.

The possibility foreseen by the norm that the constitutions might provide otherwise does not refer to their lawfully being able to leave a gap in this respect, but only that instead of respecting the competence attributed to the general chapter, they attribute it to another superior or to other inferior organizations that, in general, usually are, or can be reduced to, the superior general along with the deliberative vote of the council. That is to say, they follow the general principle—given the nature of the subject and act, which requires executive power, more proper to personal superiors than to collegial or chapter superiors.

5. *The suppression of an autonomous monastery of nuns* (§ 4) comes at the end of the norm when, the preceding practice and jurisprudence having been canonized. The Holy See is declared as the only competent body to carry out the suppression, while the constitutions remain bound to provide for the disposition of goods. The decision, thus, is correlative and harmonious with that expressed by c. 609 § 2, regarding the establishment of the monastery itself: the same one that erected it shall suppress it.

The rationale for this reservation has very much to do with the rationale that supported the reservation of establishment:

a) it was not so much a matter of a protective anachronistic measure, although if protection is spoken of, the not-so-infrequent cases, past and present, of bishops not having proceeded justly in cases of suppression must be remembered. But of an intrinsic requirement of the special juridical situation of these monasteries which, for the purpose of suppression, are similar to an institute concentrated in an autonomous house. Therefore, c. 584 or c. 616 § 2 must be applied to them, since both norms coincide about determining the competent authority for suppression;

b) it is important that the Holy See, being directly responsible for the new state that the nuns must assume, be the one which decrees the suppression and thereby prevents an inferior authority's intervening in a matter in whose beginning it had no part.

The constitutions normally foresee several alternative and graduated methods for the disposition of goods, as well as the formalities and conditions to be fulfilled before proceeding to suppression.

CAPUT II
De institorum regimine

ART. 1
De Superioribus et consiliis

CHAPTER II
The Governance of Institutes

ART. 1
Superiors and Councils

617 **Superiores suum munus adimpleant suamque potestatem exerceant ad normam iuris universalis et proprii.**

Superiors are to fulfil their office and exercise their authority in accordance with the norms of the universal law and of their own law.

SOURCES: cc. 501 § 1, 502

CROSS REFERENCES: cc. 129, 587, 596, 627, 734, 833, 8°

COMMENTARY

Domingo J. Andrés, cmf.

The chapter on religious authority opens with an extremely important norm of enormous scope. This norm, presupposing the conference or recognition of the possession of the power granted by c. 596, completes that canon by regulating the exercise of power by making definite reference to the universal and proper laws, according to this very order of enumeration and respectful of the internal hierarchy within both bodies of law.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 88ff. The formula of the profession of faith, along with the oath of fidelity to one's office, can be consulted in *Commentarium pro Religiosis et Missionariis*, 70 (1989), pp. 364–366.

1. The *superiors* are the intended subjects of the norm. Here they have been taken in the strict sense, as physical persons who, by virtue of their office, in their own name or in another's, fulfill for the benefit and in the service of their communities the functions of *magisterium*, governance, and sanctification, and exercise their religious power pursuant to the law.

In cases prescribed by the same law, they will be aided by their respective councils, but the presence of the councils still leaves intact the power and personal prominence in governance of the superiors.

The norm encompasses all *superiors* existing at all levels, who, in conformance with the present legislation, are the following:

a) superiors general;

b) ordinary major superiors;

c) mere major superiors (those who are not ordinaries);

d) local superiors;

e) superiors who are vicars of all the preceding, but only when they really act as vicars; and

f) the superior visitators, but only while they really act as visitators.

2. *The exercise of the function of superior* amounts to the fulfillment of duty and faithfulness to office. The Latin word, *munus*, allows, and one might even say demands three translations (function, position, office), none of which is greater than another. I prefer to speak of function, as function of office or post, because the word suggests most immediately and literally, the triple *function of magisterium, governance, and sanctification* into which the performance of the work of superior must be broken down.

From a deep analysis of the Code, the following can be compactly delineated:

a) a statute generic and common to all the superiors without distinctions, whose central nucleus consists of:

(i) the set of *duties* of office, formally such by reason of the tone used by the legislator, but organically such by reason of the subject matter dealt with, which one can include among and which belong to the three *munera*, namely, either the function of magisterium, or governance, or sanctification;

(ii) by the other set of *faculties*, also of office, equally such by reason of their text and formulation and which have an equal claim to be included in each one of the three *munera*;

b) a statute specific and particular for each superior at all the aforementioned levels, much lower than the first, but equally made up of duties

and faculties, likewise which can be included in each one of the three *munera* that make up the *munus* of the office of superior.[2]

3. *The exercise of power.* The mention of the technical word *potestas* better circumscribes the object of the exercise of power and it especially recovers the connection and the *imperium* inherent and particular to power. Through such power, it is proper to the holder of the office. This word was necessary, for neither all the *munera* are imperative, nor all that a superior as such can and must do is reducible to an *imperium* or mandate, though this might be the most genuine, definitive, exquisitely juridical, and difficult characterization.

It is necessary to specify that religious power can be of two types:

a) first, there are superiors (in fact the immense majority of them) who only have and need the common form of power, previously denominated *dominative*, which is understood as domestic or governing or economic power to govern the subjects according to the ends of the institute, provinces, and houses. This power has the dual origin of the nature of religious life and the free agreement to subjection on the part of the professed member, which is assumed by professing the counsel of obedience through a public vow;

b) second, there are superiors of clerical religious institutes of pontifical right who, besides the aforementioned common power, also have power of jurisdiction proper to the Hierarchy of the Church. This is defined as public ecclesiastical power, existing in the Church by divine institution, which enables the superiors to govern a subject according to the supernatural end of the Church and according to the specific end of the institute itself, and which has its origin in divine institution, its basis in the character of Holy Orders and its development according to the exclusive norms of universal law.

4. The norm of both laws: the described powers are subject to the regulation by the universal and proper law which created such powers; therefore, the universal and proper law must be the genuine and only sources of interpretation and application for the exercise of both powers.

Quantitatively, the proper law will be able to be larger, detailed, and specific, especially as a result of the new place for autonomy, which, regarding governance, has been given to the institutes and, unquestionably, by dealing with the development of the functions inherent to common power. However, the universal law, were it to be shown to be vastly inferior, will still be formally and substantively more exhaustive, more coercive, and of a superior rank, This is because, among other things, the universal law is what has granted autonomy to the proper law and what

2. Cf. for the status, according to the Code, of all superiors, D.J. ANDRÉS, *Los superiores religiosos según el Código. Guía de súbditos y de superiores* (Madrid 1985), p. 225.

has imposed subordination and controls for harmonization in the exercise of power.

5. *The profession of faith* must necessarily precede the exercise of power by the superiors of clerical institutes, pursuant to their constitutions and in conformance with the formula publicly approved by the Apostolic See (cf. c. 833,8°).

It is a grave prescription that must come before the use of religious power.

With the profession of faith, the guarantee of orthodoxy of doctrine, moral, rectitude, and the clarity of religious principles of governance is sought for the community. All this goes to show that it is a matter of grave and delicate obligation.

The act of profession must be personal, not allowing delegations and substitutions, using the formula established therefore. This is the sole guarantee of the truth and integrity of all that must be professed, and it must be done before the hierarchical superior, or a delegate, and in the presence of the interested community, generally and practically in the same act of taking possession of office.

By analogy and equivalence of functions, by the closeness of their power and because, in both cases, the assets inherent to the act of profession of faith must be safeguarded, the rest of the religious superiors of lay institutes may very well be obliged by the constitutions, or by other directories to perform the same act of profession, with identical characteristics.

Note, finally, that the constitutions of the clerical institutes remain bound not only to contain this precept, but also to specify before whom and when profession must be made.

618 **Superiores in spiritu servitii suam potestatem a Deo per ministerium Ecclesiae receptam exerceant. Voluntati igitur Dei in munere explendo dociles, ipsi subditos regant uti filios Dei, ac promoventes cum reverentia personae humanae illorum voluntariam oboedientiam, libenter eos audiant necnon eorum conspirationem in bonum instituti et Ecclesiae foveant, firma tamen ipsorum auctoritate decernendi et praecipiendi quae agenda sunt.**

The authority which Superiors receive from God through the ministry of the Church is to be exercised by them in a spirit of service. In fulfilling their office they are to be docile to the will of God, and are to govern those subject to them as children of God. By their reverence for the human person, they are to promote voluntary obedience. They are to listen willingly to their subjects and foster their co-operation for the good of the institute and the Church, without prejudice however to their authority to decide and to command what is to be done.

SOURCES: *LG* 43, 45; *PC* 14; *ET* 25; *MR* 13; *SFS* 3

CROSS REFERENCES: cc. 129, 207 § 2, 212 § 2, 573 § 1, 596 § 2, 601, 607 § 1, 734, 1191 § 1

COMMENTARY

Domingo J. Andrés, cmf.

Together with the following canon, this norm is presented as a specification of the exercise of power affirmed by the preceding c. 617, and constitutes an important absolute innovation in relation to the *CIC*/1917.[1]

1. *Meaning and scope*: by bearing on the nucleus of the Second Vatican Council's conception of religious authority and obedience, and by isolating the principal elements regarding the superior. Thus the legislator establishes here the present anthropological and theological criteria that every superior must follow in the exercise of the power intrinsic to the office.

Likewise, the norm supplements the *CIC*/1917, by explaining the origin and ecclesial mediation of authority, subjecting in a more genuine

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), p. 92; B. VALUY, *Del gobierno de las comunidades religiosas* (trans. from French) (Barcelona 1906), p. 508.

manner its exercise to the service of, dialogue with, and respect for the person, and by stating seven precepts which proceed from the duty of obedience to the will of God, which is entrusted to the superior.

2. *In the spirit of service* is the phrase located at the very beginning of the canon to show that the subsequent set of precepts are inspired and conditioned by this principle. The multifaceted Latin preposition "in," in the Biblical sense, denotes a global style, an evangelical attitude, a spirit and configuration, and the radical atmosphere in which the superior must work From this group it follows that just as this power is directed toward service, so also must service be seen as being powerful. The superior, by virtue of office, is obliged to serve by issuing orders or, what amounts to the same thing, to command by serving.

"Every Prelate has to consider himself as a servant of all, for he has been given this office in service to all, and this is his principal task," said B. Valuy at the beginning of the century,[2] a quote which may be of interest to those who put too much importance on the innovation of the Council.

3. *The origin and mediation of power* are described in a precise phrase at the outset of the norm. Power comes from God Himself, passed through the Church for its ministry and service, specifically, in our case, through the group of subject faithful who embrace the life and sanctity of the Church by their profession of obedience in a canonically approved communal manner.

The Magisterium clearly expressed this origin and mediation: "The authority of the religious superiors comes from the Spirit of the Lord in connection with the Sacred Hierarchy, which has canonically established the Institute and has genuinely approved its specific mission" (*MR* 13).

This divine origin and this ecclesial mediation justify the supernatural, anthropological and psychological content that unite the whole of these seven precepts.

4. *The seven precepts* that must regulate the exercise of power of the religious superior, preceded and enlightened by docility to the will of God, from whom the superior has received the power and precisely the reason for having received it, deserve a brief commentary exclusively from the points of view of their foundation or justification, and of their compatibility in the whole context of the values that maintain religious consecrated life:

a) *Superiors govern their subjects as children of God*, the supreme title of dignity for a person, for a believer, and for a consecrated member, and is the God from whom the superior ultimately receives power and to whom the subject has consecrated himself and is consecrated to through

2. B. VALUY, *Del gobierno de las comunidades religiosas*, cit., p. 471.

the Church (cf. cc. 573 § 1 and 654) by the taking of its vows (cf. c. 1191 § 1).

b) *By their reverence for the human person*, dignified by baptism (cf. *GS* 24, 63; *LG* 7, 3), by a specific religious consecration, and by the innate and acquired gifts that form the personality of each individual person.

c) *Fostering their voluntary obedience*, as a kind of paradoxical ideal capable of being proposed only to those who has voluntarily surrendered their person in profession (cf. c. 607 § 1), for obedience proceeds from the will and the capacity to will is always freedom. An ideal, nevertheless, that is necessary for one who has freely professed to obey, and able to be required, both in the external forum, by the juridical entity of the norm, and in the internal forum, by the presence of God to whom profession refers and by belonging to the prescription of a system that is said to be both canonical and sacred.

d) *They are to listen willingly to their subjects* (this is a natural consequence of the human, baptismal, and consecrated dignity of the subjects) and not as someone listening with "deaf ears," but as one who must gladly attend to the person exercising a right, as a one of the faithful, to present needs and desires to the Pastors of the Church (cf. c. 212 § 2), and, as a religious, the right to receive attention in the means necessary to persevere in the religious vocation (cf. c. 670). Obviously, the prescription does not include the duty of fitting the decision to the desire of the subject, nor to secure an agreement. Nor is there even a duty to respond, for the simple reason that the authority to decide and command belongs to the superior alone.

e) *They are to foster the cooperation of their subjects for the good of the institute*: a member of an institute has the institutional duty of collaborating to further the good of the institute, imposed by the canons that provide the requirements for profession and incorporation into the institute; and consequently, in close harmony with a personal commitment. The *good of the institute*, is not understood as reputation, image, or exterior splendor, but the realization of its ends and constitutive works, its common good, its patrimony, and ecclesial charism.

f) *And for the good of the Church*, universal and particular, to whose life and holiness belong the state in which the subject professes perfection (cf. cc. 207 § 2 and 573 § 2), although to pursue the good of the institute might already be the most genuine form of pursuing the good of the Church. The dialectic between the welfare of both can never produce conflicts of interest, for it is analogous to the relationship of universal law to the proper law of each institute.

g) *Without prejudice, however, to their authority to decide and to command what is to be done.* The Latin used in this precept is couched in the harsh and forceful manner employed in the law to state grave matters,

because it is here a matter of defining and protecting the pure essence of the superior's power.

The phrase includes a faculty of decision and another of precept: the first theoretically determines the work that must be done; the second, in contrast, establishes or practically imposes its execution; in both faculties the superior remains enormously alone, after all the preceding processes of dialog, listening, and respecting the person of the subject.

When confronted with the decision and the precept issued by the superior, the subject has to obey and comply with them; attitudes that will prove meritorious and sanctifying to the extent in which the spirit of faith can discover and admit that the superior is God's representative (cf. c. 601), and perceive the flow of the loving and benevolent power of God though the hierarchy of the Church, in the decision and precept, perhaps even imperfect, of the superior (cf. c. 618). If this supernatural recourse does not work, taking for granted that the superior issues orders according to the constitutions (cf. c. 601), acts of obedience will progressively become an absurd type of torture and a real impossibility.

619 **Superiores suo officio sedulo incumbant et una cum sodalibus sibi commissis studeant aedificare fraternam in Christo communitatem, in qua Deus ante omnia quaeratur et diligatur. Ipsi igitur nutriant sodales frequenti verbi Dei pabulo eosque adducant ad sacrae liturgiae celebrationem. Eis exemplo sint in virtutibus colendis et in observantia legum et traditionum proprii instituti; eorum necessitatibus personalibus convenienter subveniant, infirmos sollicite curent ac visitent, corripiant inquietos, consolentur pusillanimes, patientes sint erga omnes.**

Superiors are to devote themselves to their office with diligence. Together with the members entrusted to them, they are to strive to build in Christ a fraternal community, in which God is sought and loved above all. They are therefore frequently to nourish their members with the food of God's word and lead them to the celebration of the liturgy. They are to be an example to the members in cultivating virtue and in observing the laws and traditions proper to the institute. They are to give the members opportune assistance in their personal needs. They are to be solicitous in caring for and visiting the sick; they are to chide the restless, console the fainthearted and be patient with all.

SOURCES: *SC* 19; *LG* 44; *CD* 15, 16; *PC* 4, 6, 14, 15; *DV* 25; *PO* 7; *ES* II: 16; IOANNES PAULUS PP. II, Let. Ap. Sanctorum altrix, 11 iul. 1980, VI (*AAS* 72 [1980] 788–790)

CROSS REFERENCES: cc. 23–28, 212 § 2, 576, 578, 587, 588 §§ 2–3, 598 § 2, 601–602, 607 § 2, 610 § 2, 652 § 2, 662–664, 670, 689 § 2, 734, 834

COMMENTARY

Domingo J. Andrés, cmf.

Together with the preceding norm, this norm is innovative with respect to the *CIC*/1917. Thus faced with a concept considered by some as "too juridical" regarding the superior in the *CIC*/1917, this canon emphasizes more the pastoral dimension of the figure by softening the exercise of power and bringing it as close as possible to the subjects.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 97–108.

1. *The meaning and scope*: apart from what has already been said, consist in presenting a list of delicate duties of office originating from a firmly grounded historical-traditional process of refinement. At the same time, this list reflects the numerous constitutions of institutes in which it would be easy to place each or all of these precepts.

Likewise, the norm demonstrates great harmony with the whole of the canonical system to which it belongs, by having some of the duties of office converge in the figure of the superior. The origin of this office consists in duties or rights fundamental to all consecrated. In this way, with extreme skill on the legislator's part, the norm serves to facilitate and foster the observance of such duties, endowing the whole set with an enormous power of persuasion.

2. *The imperative nature* of the whole of these eleven precepts directed to the superior cannot be denied or held to be unimportant by those who feel attracted to the magnetism of the subject matter or content regarding the norms that deal with each one of the precepts.

This group of norms possesses the imperative nature that corresponds to every general law of the Church, specifically in this case to the Code. Moreover, each one of the norms of the group possesses the specific imperative nature that is afforded by the imperative form in which it has been formulated and possesses the moral or religious weight of its specific content.

Eleven canonical obligations are imposed on the superior and the subject is indirectly and by reflection guaranteed a kind of generic right that the superior perform these obligations in a supernatural, charitable, and human style that this group distills.

One cannot doubt that a suitable fulfillment of the whole of these obligations will enormously facilitate the exercise of power in a specific case of decision and of precept.

3. *The eleven precepts* directed to the exercise of the power of the superior deserve a very brief commentary that emphasizes especially their content, harmony within the context, and their particular weight in the configuration of the office of superior, as the new law has established:

a) *Assiduous dedication to the office of superior.* This is the fundamental obligation, which encompasses all that follow, and is prefaced by the deductive particle *igitur.* This diligent devotion to their office will be given specific expression therefore in the fulfillment of the prescriptions that follow it.

b) *Building in Christ a fraternal community.* This precept has a meaning and scope analogous to the previous one, in that the drafting of the norm follows it. It is the fundamental and common norm for all the institutes and societies (cf. cc. 602) and specifically is a part of the religious institutes (cf. cc. 607 § 2 and 662).

c) *Nourishing the community with the food of the word of God*: a duty that affects all the superiors, in particular the local superiors, who fulfill it personally or by additionally making use of others. It is the divine Word that, above all, is made clear in the Bible and embodied in the Eucharist, but also occurs on other occasions. It is the same Word whose study is immediately imposed on the novice (cf. c. 652 § 2) and, in the richest and most varied manner, on every professed member (cf. c. 663 §§ 1–3).

d) *Leading the community in the celebration of the sacred liturgy*: a duty literally paired with the preceding one and that entails the proper formation of the superior and the community. The precept is harmonized with the generic mandate for all the members of the institute of cc. 663–664, and with the one specifically referring to the novices of c. 652 § 2. The term "liturgy" must be understood not only in the strict sense of c. 834, but also in a general sense concerning all aspects of worship).

e) *Exemplary exercise of the virtues:* which are to be cultivated in accordance with the universal law and the law proper to the institute. Because every Christian and religious tradition is constant and unanimous, besides being extraordinarily rich and eloquent, in respect to the decisive importance that the example of the ecclesiastical and religious superiors is for those entrusted to them.

f) *Exemplary observance of the laws and traditions proper to the institute* are literally related to the previous precept, but are genuinely different both in subject matter and in the present will of observance that is required. *Laws* are identified with "proper law" following the construction of c. 587. *Traditions*, in contrast, are those suitably qualified communal practices belonging to patrimony (cf. c. 578) that, without having been imposed by the legislator nor by the superior, obtain the force of law itself, provided that it is not contrary to the general conditions of the efficacy of custom in the law of the Church (cf. cc. 23–28), that is, if they are wholesome.

g) *Opportune assistance to members in their personal needs*: which will be those needs which the member, as one of the faithful, can claim pursuant to c. 212 § 2, especially those which, as a religious, can be claimed pursuant to c. 670, in relation to the obligations that weigh upon the institute and its superiors.

They can be needs of all kinds, derived from one's profession, but their satisfaction really depends on the objective possibilities of each institute. The assistance claimed for the satisfaction of the same is evidently ordered to facilitate the duty of fidelity to the vocation.

h) *Being solicitous in caring for and visiting the sick*: especially those who are particularly in need, will be in response to an urgent necessity. The duty of care and aid is not imposed on the superior as being direct and personal. However, solicitude must be shown so that the sick are attended to and visited by everyone, well understanding nevertheless, that

to the extent possible, personal dedication to this task will be especially valuable in furthering a family atmosphere, which should prevail in intra-community relationships.

i) *Chiding the restless*: not as a work of common mercy, but as a non-delegable duty of office consisting in the canonical chiding for the good of the one chided and of the community. It is a personal duty and can be carried out in private or in public, but always with the highest caution and discretion. Tradition, extremely rich in this regard, agrees in that it is a special obligation of every superior, and must be founded in justice, directed by discretion, and inspired by charity.

j) *Consoling the fainthearted*: understood as those who through weakness of temperament can tend to become discouraged when faced with normal or common difficulties. It is the precept that most reminds us of the well-tried motivational work of the superior, of which so much is spoken nowadays. It is, likewise, a work of charity and a form of alms frequently necessary in religious community life.

k) *Patience with all*: being tolerant, uncomplaining, understanding with everyone, and especially with the most restless, fainthearted, critical, and rebellious. It is a virtue necessary and proper to one who serves and so it becomes appropriate to demand it of the superior, who has to exercise power in the spirit and works of service. It is also a precept which one cannot delegate or transfer, and thereby is possibly the most complex and consistently demanding of the eleven; and of course, among the best fruits produced by good governance. No wonder tradition has classified wrath as "the vice most destructive of good governance."

620 **Superiores maiores sunt, qui totum regunt institutum, vel eius provinciam, vel partem eidem aequiparatam, vel domum sui iuris, itemque eorum vicarii. His accedunt Abbas Primas et Superior congregationis monasticae, qui tamen non habent omnem potestatem, quam ius universale Superioribus maioribus tribuit.**

Major Superiors are those who govern an entire institute, or a province or a part equivalent to a province, or an autonomous house; the vicars of the above are also major Superiors. To these are added the Abbot Primate and the Superior of a monastic congregation, though these do not have all the authority which the universal law gives to major Superiors.

SOURCES: *cc.* 488,8°, 501 § 3

CROSS REFERENCES: cc. 134 § 1, 607 §§ 2–3, 616 § 3, 621, 734, 1405 § 3, 2°, 1427, 1438 § 3

COMMENTARY

Domingo J. Andrés, cmf.

This canon is absolutely indispensable in its specificity because the law confers on these superiors an important group of faculties while charging them with the same obligations, all belonging to the *munera docendi, regendi et sanctificandi*, according to the superior's crucial leadership role in the community. It is likewise indispensable because a significant number of superiors are also *ordinaries* pursuant to c. 134 § 1, with the noteworthy consequences that are derived from that status in the ecclesiastical jurisdictional order.[1]

1. *The meaning of the norm* is limited to a normative and specific definition of specifically who the major superiors are and how they are designated. The point of reference for the norm is the type of juridical person over which the power of the corresponding superior is projected.

2. *Major superiors in the full and proper sense* are:

a) those who govern an entire institute, called by the universal law *supreme moderators*, and most often called superior general by the proper law;

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 108ff; idem, *Los superiores religiosos según el Código. Guía de súbditos y de superiores* (Madrid 1985), pp. 163–179 for major superiors; pp. 180–202 for ordinaries.

b) those who govern the part of the institute called a province are called *provincial superiors*;

c) those who govern the part of an institute that is equivalent to a province are commonly called quasi-superiors or *Vice-provincials*;

d) the local superiors of a *sui iuris* house (cf. c. 613) are most often called *Provosts* or *abbots*;

e) all the respective *vicars* of the four preceding superiors, when they act as such in the strict sense, not to be confused with those sometimes loosely called vicars, inasmuch as they are endowed with merely delegated power and can never be ordinaries. A genuine vicar has power dependent on the office, even though it is vicarious power.

3. *Major superiors in the sense equivalent in law to the preceding* are:

a) the *abbot primate*, or superior of a Benedictine monastic confederation;

b) the superior of a monastic congregation is generally called its *President*, *Archabbot*, or *vicar General.*

These two are equivalent to the group of the first five, because they lack a faculty or obligation which constitutes the power of the major superior by virtue of the universal law. We will address these main faculties or obligations shortly. To measure the degree of similarity, a result of having or lacking faculties and obligations particular to the genuine major superior, reference must be made to the proper law of each institute.

4. Consequently, *none* of the council member consultants, assistants, definators, etc., *are superiors*, whether general, provincial, or local, except when they are at the same time vicars of the superior, taking "vicar" in the strict sense.

Nor are local or minor superiors true superiors, except those who are superiors of a house *sui iuris*.

5. *Particular obligations of the major superior*: we will enumerate them here, referring to the respective canons, as diversified in the three *munera*, as a demonstration of the consistency of a figure, the notion of which is not given by the *CIC*:

a) *In the function of governance*: cc. 642, 644, 645 § 2, 650 § 2, 689 § 3, 694 § 2, 695 § 2, 697, 703, 444 § 1;

b) *In the function of sanctification*, as implicit obligations, other canons could be listed: cc. 1030, 1032 § 2, 1038, 1054.

6. *Particular faculties of the major superior*: these are enumerated with the same criteria:

a) *In the function of governance*: cc. 641, 645 § 4, 649 § 2, 653 § 2, 665 § 1, 672 with 285 § 4, 689 § 1, 703, 708, 443 § 3, 2°, 1427 § 1;

b) *In the function of magisterium*: c. 832;

c) *In the function of sanctification*: cc. 967 § 3, 974 § 4, 1019 § 1, 1052 § 2, 1033–1039, 1050, 1°, 1051, 1025, 1029, 1051, 2°.

(As *implicit faculties*, that is, without express mention of the holder, but certainly attributable to the major superior, the following, among others, can be enumerated: cc. 587 § 4, 609 § 1, 632, 636, 642, 653 § 1, 656, 3° and 5°, 657 § 3, 659 § 2, 671, 672, 683 § 2, 695 § 1).

To all of these must be added those that are explicitly attributed to the superior general and especially to the major superior.

7. *The major superiors who are "ordinaries"*: this illustrious figure is the sum of the following five elements:

a) non-governance of the Church nor of a particular church;

b) ordinary power (proper or vicarious);

c) clerical character of the institute of which they are major superiors;

d) pontifical character of the same institute; and

e) office of major superior possessed by the holder.

8. *Particular obligations of the major superiors who are "ordinaries"* are (we will refer to the corresponding canons):

a) *In the function of governance*:

— of a legislative character: cc. 65 §§ 1 and 3, 68, 84;

— of an executive character: cc. 474, 1277 § 2, 1279 § 2, 1301 § 2, 1302 § 2, 1304 § 1, 1305;

— of a penal character: cc. 1339 § 3, 1341, 1342 § 3, 1350 § 2, 1356 § 2, 1371, 1373;

— of a procedural character: cc. 1717 §§ 1–2, 1718, 1719, 1720, 1721 § 1, 1737 § 1.

b) *In the function of magisterium*: cc. 258 with 659 § 3, 829, 830 § 3;

c) *In the function of sanctification*: cc. 951 § 2, 956, 958, 1073, 1052 § 2, 1039, 1189, 1224 § 1.

9. *Particular faculties of the major superiors who are "ordinaries"* are (we will refer to the corresponding canons):

a) *In the function of governance*:

— of a legislative character: cc. 5 § 1, 14, 87, 66, 59 § 1, 132 § 2;

— of an executive character: cc. 162, 273, 274 § 2, 285 § 4 with 672, 289, 1265 § 1, 1267, 1276 § 1, 1279 § 1, 1281 § 1, 1283, 1°, 1284 § 2, 6°, 1288, 1301 § 3, 1302 §§ 1 and 3, 1304 § 1, 1309, 1310 § 3;

— of a penal character: cc. 1339 §§ 1–2, 1340 § 3, 1348, 1355 § 2, 1356 § 1, 2°;

— of a procedural character: cc. 1480 § 2, 1653 § 3, 1708, 1717 § 3, 1722, 1737 § 3, 1738, 1739.

b) *In the function of magisterium*: c. 764;

c) *In the function of sanctification*: cc. 903, 936, 971, 1042, 3°, 1044 § 2, 2°, 1047 § 4, 1052 § 2, 1207, 1212, 1210, 1224 § 2.

621 **Plurium domorum coniunctio, quae sub eodem Superiore partem immediatam eiusdem instituti constituat et ab auctoritate legitima canonice erecta sit, nomine venit provinciae.**

The union of several houses which constitutes an immediate part of the same institute under the same Superior and has been canonically established by lawful authority, is called a province.

SOURCES: cc. 488,6°, 494 § 1; *AIE* 1°

CROSS REFERENCES: cc. 115 § 2, 581, 608–610, 620, 734

COMMENTARY

Domingo J. Andrés, cmf.

The norm presents the province as a greater organism or part of an institute, which is the axis and type of every other similar figure that unites several houses, about which the Code prescribes nothing, and which the laws of the institutes must define and configure in relation to the province.[1]

The norm is applied to all the institutes, without excluding those of diocesan right, even though it is very probable that these will not be composed of provinces, or the monastic congregations.

1. *Definition*: by bringing to the surface all the constitutive elements that, explicitly or latently, are evident in the canon, the province can be defined as an organism or greater juridical person, and part of an institute (cf. c. 581). It is formed by the familiar and juridical union of several houses, canonically established through a formal decree by the superior general with the council, or at times by the general chapter, so as to facilitate governance, community life, and the pastoral ministry. It is governed by its own major superior, called a provincial superior, endowed with ordinary power, and possesses its own governance and administration distinct from though subordinate to the general organisms and, *a fortiori*, the local organisms.

In this descriptive idea, the essential constitutive elements are the following:

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 110ff.

a) at least three houses (that would be the matter, together with the means and territory);

b) their own means of subsistence and autonomy (vocational, formative, economic, etc.);

c) a circumscribed and flexibly understood territory;

d) a provincial superior;

e) a system of good governance, communal life and apostolate (final cause); and

f) canonical establishment by a formal decree (effecting cause and canonical form).

2. *Importance of the province*: from multiple points of view, establishing or suppressing a religious province is a matter of extraordinary gravity:

a) for the purpose of incardination and work in the same, there are great variations from province to province;

b) for the purpose of obedience to a major superior and not to others, as well as having two major superiors (provincial and general) or one only (the general);

c) in formative, apostolic, community matters, according to the circumstances of each province;

d) for the purpose of exercising the same rights and duties expressed in the proper law, diversely executed and applied;

e) for the purpose of unity, decentralization, subsidarity, etc., of the institute itself.

3. *The figures or parts equivalent to the province*: they are only mentioned in an embryonic manner or in passing by c. 620, in order to establish that its superior is also, or can be, a major superior, as well as the vicar of the latter, as long as the degree of equivalence suggested by c. 620 is given.

In this sense there can be substantially two hypotheses:

a) one that deals with certain unions of persons, rather of houses; or that the unions of houses be governed by a delegate; or that the house be fewer than three; or that, even though being more than three units, they have not been established as a province. In none of these cases has the minimum of equivalence envisioned by the canon been achieved.

b) on the other hand, if it is a real union of at least three houses, with a superior who has ordinary power, but vicarious or exercised in the name of the major superior of another organization, equivalence may exist (quasi provincial) if so declared by the proper law or the decree of the competent superior as long as there is no establishment as a province.

Importance of the quasi province and related figures. The importance of these figures is that they can and ought to be:

a) temporary situations that precede the establishment of a province;

b) they will be given greater flexibility, being less stable, which can have beneficial results for the movement of persons;

c) for some, they appreciate the fact that they can have a greater representation than the provinces in the general chapter, but others place more importance on the fact that they can promote a closer and more participatory communal life: and

d) they are normally seen positively because they can provide a greater incentive for working collectively.

No doubt this has a certain appeal, but the model continues to be the province. In fact, if we go by the shortages that can be seen today, in the background for preferring these figures, there is still seen a kind of "making a virtue of necessity."

622 **Supremus Moderator potestatem obtinet in omnes instituti provincias, domos et sodales, exercendam secundum ius proprium; ceteri Superiores ea gaudent intra fines sui muneris.**

The supreme Moderator has authority over all provinces, houses and members of the institute, to be exercised in accordance with the institute's own law. Other Superiors have authority within the limits of their office.

SOURCES: c. 502

CROSS REFERENCES: cc. 587, 596, 608–610, 617, 621, 734

COMMENTARY

Domingo J. Andrés, cmf.

With the same all-encompassing generality of the *CIC*/1917, the norm states the passive subjects over which the power of religious authority is projected by repeating in two different and confluent ways. Canon 617 has already provided rules regarding this same matter, namely, that it should be exercised pursuant to the law within the framework of their office.[1]

1. *The addressees* of the canon are all the superiors without exception or distinction regarding level, character, or class of institute, although divided, without apparent justification, into two blocs: in the first bloc, the superior general, before all the rest in the second bloc (mayor, ordinary, local, their vicars and visitators).

Certainly excluded are the external superiors (the Pope and bishops). Those who belong to the bloc of internal superiors are not only the personal superiors in the strict sense, but also the chapter and collegial superiors who, compared with the foregoing, are superiors in the wider sense.

2. *Power*: the Latin meaning of the verb referring to the power of the general superior (*obtinet*) suggests notions of obtaining by recognition or granting by the law at the beginning of the mandate, and of the holding of

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 113; idem, *Los superiores religiosos según el Código. Guía de súbditos y de superiores* (Madrid 1985), pp. 151–162 for a complete view of the figure or status of the general superior.

prolonged power during the mandate. From the point of view of the division of power into *duties* or charges and *faculties* or rights,[2] this is exact.

On the other hand, the meaning of the term *gaudent*, applied to the power of the rest of the superiors, suggests only the idea enjoyment of power once it has been obtained or has been recognized by the law. (From the identical previous point of view, namely, if it is noticed that power is composed also of charges and duties of office, although the verb is very technical and frequent in this context, it still produces a certain irony to think that one subjectively enjoys carrying out the duties of office).

The received dual power is defined by c. 596 the exercise of which is moderated by c. 617.

3. *Characteristics of the power of both blocs*: we can group them in synthesis and in contrast as follows:

a) *the power of the superior general* is granted by the law; universal and supreme in the internal order of the institute; projected over all the juridical and physical persons; immediate for the institute, mediate for the rest of the juridical and physical persons; circumscribed by the proper and universal law, or, in other words, limited by the office that those laws describe;

b) *the power of the rest of the superiors*, conferred by the law; limited to the juridical person of which the superiors are a part and the physical persons of the latter; immediate for both; subordinated to the power of the superior general, but proper; and limited or circumscribed by the office itself, or, in other words, circumscribed by the proper and universal law, which regulates the office alluded to.

4. As *clarifications regarding the different passive subjects* of power, the following can be said:

a) *all the provinces*, in conformance with their definition by c. 621; as a whole and singularly each one of them; also all of the remaining organisms whether comparable or not to the province (cf. c. 620); together with the superiors in charge of such organisms, without such, because they embody the principle of authority, these juridical persons cannot exist in law;

b) *all the houses*, with the clarifications identical to those of the previous case. But stating that the power over the provinces does not convert the superior general to a provincial superior; likewise the power over the houses does not make the person into a local superior, the same being true of the provincial superior regarding the houses of the province;

c) *all the members or brothers*, since they are incorporated into a house or similar communal figure and since they are incardinated in a

2. See above, commentary on c. 620.

province or comparable figure; without distinction between temporarily or perpetually professed. This includes the novices.

The same clarifications must be made regarding changing the superior general for another superior.

5. *That the power must be exercised according to the proper law*: leaving aside the inevitable partial repetition of what has already been provided in c. 617. That in the style, adaptation, and in adherence to the details of the proper law and likewise, in the manner most specific, most doctrinal, and most limited, which the proper law customarily provides for this office.

Nevertheless, in no way is it meant that the superior does not have power or that the superior can refrain from exercising it, pursuant to the universal law. In fact, the figure is consistently portrayed in the universal law with express attributions in the most delicate matters, as seen from their explicit mention in cc. 591 § 1, 616 § 1, 624 § 1, 625, 631 § 1, 647, 668, 684 § 1, 686 §§ 1and 3, 688 § 2, 690 § 1, 695 § 2, 697 § 3, 698, 699 § 1, 1308 § 5, 1405 § 3, 2°, 1427, 1438 § 3.

On the other hand, the phrase *intra fines sui muneris*, referring to the rest of the superiors, cannot be thought of in the same way, for it is a duty regulated by the universal and proper law.

623 **Ut sodales ad munus Superioris valide nominentur aut eligantur, requiritur congruum tempus post professionem perpetuam vel definitivam a iure proprio vel, si agatur de Superioribus maioribus, a constitutionibus determinandum.**

To be validly appointed or elected to the office of Superior, members must have been perpetually or definitively professed for an appropriate period of time, to be determined by their own law or, for major Superiors, by the constitutions.

SOURCES: c. 504; *AIE* 3°

CROSS REFERENCES: cc. 157ff, 164, 180–183, 587, 617, 620, 657–658, 723, 734

COMMENTARY

Domingo J. Andrés, cmf.

The norm, abandoning the old criterion of natural age, states the only requirement to be designated a religious superior validly, applicable to all the institutes and superiors: that of being an experienced, perpetually professed member of the same institute.[1]

Technically, it accomplishes this *a)* by creating a disability through adding the qualification *ad validitatem* to the requirement; *b)* by fixing an undetermined, but appropriate, period of time after definitive or perpetual profession, before which no one can be, designated a religious superior.

1. The basic reasoning behind this norm appears to lie in the following: a) the capital importance of the office, seen at all its levels, before which it is objectively presumed that only a perpetually professed can meet its demands, both from the point of view of the law and from the psychology of the community and persons; b) many functions proper to the superior demand the guarantee and backing of a solid personal experience in perpetual profession; c) circumstantially, the experience of recent years has demonstrated that it is not at all a good idea to run the risk of increasing the cases of local superiors who were temporarily professed leaving or recently perpetually professed, with the consequent pernicious effects on the community; d) by fixing an appropriate age for perpetual religious profession, an appropriate age is indirectly fixed for the person becoming superior.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 116–119.

2. *Valid appointment or election*: likewise, the norm only envisions two possibilities for conferring the office of religious superior: a) through appointment by another lawful and competent superior (cf. c. 157); b) through a confirmed election (cf. cc. 164–179, 635 § 3). Rejected are all other systems for gaining office, namely, institution prior to presentation (cf. c. 158–173), admission prior to postulancy (cc. 180–183) and pure election without confirmation by another hierarchical superior.

Since this is a requirement *ad validitatem*, not only are all the designations of temporarily professed members null, save cases of dispensation by the Holy See, but also designations without appointment or election—with the same exception—of any kind of superior in the strict sense.

One or both of the two modalities is imposed according to the optional levels, but not so that it comes to choosing arbitrarily the most convenient method. The constitutions, pursuant to c. 625, have to have established one of the methods for each case of superior; and, upon executing it, must fulfill the norms of c. 626.

Although it might seem that both ways lead to similar results, the elective method seems more democratic and collegial. But the norm proposes both, without recommendation or showing a preference: in any case the particular character, nature, tradition, and conception of authority of each institute must be followed.

3. *The time after definitive or perpetual profession* is obligatory and determined by the proper law; either the constitutions for major superiors (cf. c. 620); or another method for the rest of the superiors.

Perpetual profession is required because the institute demands the taking of perpetual vows (cf. cc. 657 and 658), after temporary profession. *Definitive profession* is required because in an institute, after temporary vows perpetually renewable are taken, profession is declared definitive after a certain number of renewals, and is otherwise comparable to perpetual profession.

Comparative law found in the most recent constitutions tends to be, for the determination of this period, between five and ten years, depending on the kind of superior in question.

Curiously, by having eliminated the phrase "in instituto *proprio* transactam," the norm does not explicitly require that perpetual profession occur in the institute in question. It is hardly useful to say that common sense dictates that this profession should be required. However, it must be added that the nature and ends of the office strongly imply, and that the presumption of objective instability that every transfer from institute to institute entails in principle, would make it preferable, according to the circumstances, that the superior be one who has always been professed in the same institute.

624 **§ 1. Superiores ad certum et conveniens temporis spatium iuxta naturam et necessitatem instituti constituantur, nisi pro supremo Moderatore et pro Superioribus domus sui iuris constitutiones aliter ferant.**

§ 2. Ius proprium aptis normis provideat, ne Superiores, ad tempus definitum constituti, diutius sine intermissione in regiminis officiis versentur.

§ 3 Possunt tamen durante munere ab officio amoveri vel in aliud transferri ob causas iure proprio statutas.

§ 1. Superiors are to be constituted for a certain and appropriate period of time, according to the nature and needs of the institute, unless the constitutions establish otherwise for the supreme Moderator and for Superiors of an autonomous house.

§ 2. An institute's own law is to make suitable provisions so that Superiors constituted for a defined time do not continue in offices of governance for too long a period of time without an interval.

§ 3. During their period in office, however, Superiors may be removed or transferred to another office, for reasons prescribed in the institute's own law.

SOURCES: §§ 1 et 2: c. 505; CodCom Resp. II, 2–3 iun. 1918 (*AAS* 10 [1918] 344); SCR Resp., 6 mar. 1922 (*AAS* 14 [1922] 163–164); SCR Decr. *Religionum laicalium*, 31 maii 1966, 8 (*AAS* 59 [1967] 362–364); *CAd* 19
§ 3: cc. 192 § 1, 193

CROSS REFERENCES: § 1: cc. 578, 588 § 3, 620, 623, 668 §§ 4–5, 670, 675 § 1, 687 §§ 1–3, 732, 734
§ 2: cc. 587, 608, 620, 624 § 1, 734
§ 3: cc. 190–195, 587, 734

COMMENTARY

Domingo J. Andrés, cmf.

The norm is decidedly in favor of mobility in offices of religious governance, as well as the transfer and rotation of physical persons who,

worthily and lawfully, can hold such offices for the benefit and in service of the community.[1]

To do this effectively, the legislator forms a nucleus of four norms, all applicable to every institute and Superior in the strict sense. By analogy, in view of its spirit and intention, it is also applicable to immediate participants in the government and, *a fortiori*, to superiors not in the strict sense.

1. Among the reasons behind this norm, which is certainly innovative, the following can be noted:

a) the good of the institute, flexibility in governance, the benefit to the members, both superiors and subjects;

b) establishing the truth that a religious is, before anything else, *a child of obedience* and not a functionary of the world, although the office is familial and internal;

c) extending to all the members the responsibility of participating in the tasks of governance without attachment and in the spirit of service and generosity; and

d) trying to free the superiors from the possible difficulties implied by an excessive time in office that could dull their own spirit.

2. *First norm*: every superior must be constituted in office for a certain and appropriate period of time, according to the nature and needs of each institute (§ 1).

Certain means previously determined, limited, clear, in a manner by which everyone indubitably knows the beginning and end of the mandate.

Appropriate means opportune to, homogeneous, and harmonious with:

a) the nature and needs of the institute, in general;

b) its traditions, both particular and derivative;

c) specifically, the structure, goals, and qualities required for each office;

d) at each level.

As *exceptions* to this first rule, the two following are anticipated:

a) the constitutions can establish the office of superior general for life;

b) the constitutions can establish the office of superior of a house *sui iuris* for an indefinite time or for life.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 116–119.

3. *Second norm*: express determination that the superiors may not remain uninterruptedly in offices of governance for more than the allotted time (§ 2).

Based on the certainty of temporality, it now tries to avoid the summing of repetitive partial periods of mandate, which would end up by making useless the practical scope of the first norm. Thus the law of each institute is obliged to determine that the superiors may not remain in offices of governance neither for more than the allotted time nor uninterruptedly:

a) for not more than the allotted time (*diutius*), pursuant to cc. 623 and 624, according to the nature and needs of the institute, in conformance with each office and level, pursuant to what has been stipulated in the proper law. For many considerable chapters, the time of a superior's remaining in office could become inappropriate and unlawful;

b) not uninterruptedly (*sine intermissione*), means that the universal norm is forcing the proper law to positively create intermittencies, interruptions, periods of cessation, rest, etc., in every office;

c) by saying *offices of governance*, in the plural and generically, by omitting expressly saying "in the same office," it means to avoid rotation into different offices that, proper or extended, could be classified as religious governance: consultants, visitators, delegates, or others pursuant to the proper law; by the precision of the context and by the spirit of the norm, other offices of participation in ecclesiastical governance, or civil *ad extra* to the institute are also contemplated;

d) regarding the *appropriate norms* that the canon requires of the proper law, one can imagine numerous formulas aimed at reaching this end and intended by the universal law. By not establishing any of these norms in the constitutions, except as required by the universal law (i.e. c. 623), the institute reserves the freedom to change, adapt, or substitute them in view of the results obtained. Nevertheless, one can see that worst constitutions, considering the scant achievements that most institutes have obtained up to now regarding the mobility of superiors, are those in which c. 624 is written out of merely cited casually. Unquestionably, if this is what is done and as long as such condition remains, the canon has still not been observed.

Nevertheless, it would not be good to exaggerate the value of this norm or to be hasty in putting it into practice. The spirit of the norm is not satisfied by the fact of frequently changing the holders of offices of governance. The worthiness and suitability of those elected to office must always remain the criterion of greatest rank and not the simple fact of change. The principal intention of the norm is not to solve problems that might be derived from irregularities in the performance of the office of superior or to deny the permanence of those who, no doubt, properly carry out their duties. It is, simply, always with the good of the community in

mind, to facilitate those who are worthy and suitable in having a chance at being elected to office.

4. *Third and fourth norms*: supplementing the force of the previous norms, the canon stresses and recalls a faculty granted to competent authority, according to the causes foreseen by the law, which is the norm of *transfer* and the norm of *removal* from the office of superior (§ 3).

The duty and innovation does not consist in bringing up universal mechanisms already stated for mobility in all the offices of the Church, like transfer (cf. cc. 190 and 191) and removal (cf. cc. 192–195). However, in having initiated and encouraged the proper laws to state the causes and particular reasons that can unleash, by increasing and facilitating it, the mechanism of mobility.

With respect to these possible causes that can be stated in the proper law, it is necessary to keep in mind the following:

a) that always more grave causes are required for removal than for transfer;

b) that a transfer should also avoid the vicious circle of rotation of offices of governance, within the meaning of the norm of § 2.

These causes can be the following:

a) irresponsible or incompetent performance in office;

b) reasonable demands of the common good or of a majority of those negatively affected by the manner of governance or affected more positively by a new superior;

c) the reasonable proposal of the office holder himself;

d) reasons stemming from the need to restructure a community;

e) concrete cases of including formulas such as "long periods of time," "remaining for more time than one's duty," or "remaining without interruption" in offices of governance is in contradiction to the letter and spirit established in § 2.

625 **§ 1. Supremus instituti Moderator electione canonica designetur ad normam constitutionum.**

§ 2. Electionibus Superioris monasterii sui iuris, de quo in can. 615, et supremi Moderatoris instituti iuris dioecesani praeest Episcopus sedis principis.

§ 3. Ceteri Superiores ad normam constitutionum constituantur; ita tamen ut, si eligantur, confirmatione Superioris maioris competentis indigeant; si vero a Superiore nominentur, apta consultatio praecedat.

§ 1. The supreme Moderator of the institute is to be designated by a canonical election, in accordance with the constitutions.

§ 2. The bishop of the principal house of the institute presides at the election of the Superior of the autonomous monastery mentioned in can. 615, and at the election of the supreme Moderator of an institute of diocesan right.

§ 3. Other Superiors are to be constituted in accordance with the constitutions, but in such a way that if they are elected, they require the confirmation of the competent major Superior; if they are appointed by the Superior, the appointment is to be preceded by suitable consultation.

SOURCES: § 1: c. 507
§ 2: c. 506 §§ 2 et 4; SCR Resp., 2 iul. 1921 (*AAS* 13 [1921] 481–482); CodCom Resp. II, 30 iul. 1934 (*AAS* 26 [1934] 494)
§ 3: *PC* 14; *ES* II: 18

CROSS REFERENCES: § 1: cc. 164–179, 586, 587 §§ 1–3, 622, 631, 734
§ 2: cc. 589, 594, 615, 616 § 3, 625 § 2, 628 § 2, 2°, 638 § 4, 686 §§ 1 et 3, 688 § 2, 691 § 2, 734.
§ 3: cc. 164–183, 587 §§ 1–3, 734

COMMENTARY

Domingo J. Andrés, cmf.

With ample room for autonomy, as shown by the role of the constitutions, the norm specifically imposes the way in which the different superiors are designated, and is analogously formally constructed as c. 622,

which distinguishes between the general superior and the rest of the superiors.[1]

1. *Canonical election* is the manner established for appointing *the superior general,* in view of the extraordinary importance of the office, but, pursuant to the constitutions, also in view of the importance and autonomy established in the field of governance by c. 586.

All other possible methods are rejected and the need for confirmation by the Holy See is suppressed.

In the regulation by the constitutions, aside from having to pay attention to cc. 164–169, which are only those provisions modifiable by the constitutions, or are those of a subsidiary or complementary nature to a nonexistent proper law, namely, cc. 164–165, 167, 174–176, 179 § 5 and 180), these criteria can be guidelines:

a) the issue *must be* regulated in the constitutions, another directory or code not being sufficient another directory or inferior code;

b) they cannot contradict the Code except in the aforementioned complementary points; and

c) if they were limited to transcribing the present norm, and adding absolutely nothing else, they would not fulfill its spirit and would have failed to have taken advantage of the degree of autonomy that the norm guarantees.

2. *Elections to be presided over by the diocesan bishop,* or one of his delegates, applies to a superior of a monastery *sui iuris* and a superior general of all the institutes of diocesan right.

These two elections, which also must be had as canonical elections pursuant to the constitutions, are presided over, as an obligation and as a right, by the diocesan bishop of the principal house or general curia, in the case of a diocesan institute, or the local bishop where the monastery in question is located, since there is no higher major superior.

3. *Election of the rest of the superiors* other than the superior general. Not the least trace can be seen of the legislator's preference for this system of appointment. If it is chosen, it should also be regulated in the constitutions, as a sign both of importance and of autonomy, and the election must be confirmed by another hierarchical competent superior, according to provisions of the constitutions (cf. cc. 178 and 179).

The necessary *confirmation* is not limiting or conditioning *a priori* of any election, which continues being prior, free, and autonomous. It is only a guarantee and condition of unity and cohesion for the institute.

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1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 124–135; idem, *Los superiores religiosos según el Código. Guía de súbditos y de superiores* (Madrid 1985), pp. 77–89.

4. *Alternatively, the appointment of the rest of the superiors:*, this is the second possible method to be determined previously in the constitutions. However, it must be bindingly *preceded* by a suitable consultation so as to avoid favoritism, arbitrariness, and errors damaging to the communities, and so as to increase the perceived participation and co-responsibility of everyone in the offices of governance.

Regarding the consultation, it is required that :

a) it is treated as such, that is, it is a request for a majority vote of a consultative nature and not binding on the superior who must effectuate it;

b) it precede the canonical appointment, though its modalities can be many and unclassifiable, and though the attitude of those consulted can vary radically, ending even with silence; and

c) it be appropriate, that is, proportionate to the office in question and to the interested subjects.

5. Temporary *postulation* (cf. cc. 180–183): although it is not explicitly excluded, one can maintain that the former norm contained in c. 507 § 3 *CIC*/1917 is admissible in extraordinary cases and when the constitutions either foresee it or at least have no explicit prohibition against it.

Nevertheless, one must take into account the new norms decreed in c. 624 regarding the temporary and revocable nature of this situation. It is just possible that it may become another mechanism to help superiors remain in office for an unduly long period of time.

626 **Superiores in collatione officiorum et sodales in electionibus normas iuris universalis et proprii servent, abstineant a quovis abusu et acceptione personarum, et, nihil praeter Deum et bonum instituti prae oculis habentes, nominent aut eligant quos in Domino vere dignos et aptos sciant. Caveant praeterea in electionibus a suffragiorum procuratione sive directe sive indirecte, tam pro seipsis quam pro aliis.**

Superiors in conferring offices, and members in electing to office, are to observe the norms of the universal law and the institute's own law, avoiding any abuse or preference of persons. They are to have nothing but God and the good of the institute before their eyes, and appoint or elect those whom, in the Lord, they know to be worthy and fitting. In elections, besides, they are to avoid directly or indirectly lobbying for votes, either for themselves or for others.

SOURCES: cc. 153 § 2, 506 § 1, 507 §§ 1 et 2

CROSS REFERENCES: cc. 146–157, 164–179, 180–183, 524, 587, 591, 598 § 2, 608, 614, 620, 636 § 1, 734, 830 § 2, 1181, 1389

COMMENTARY

Domingo J. Andrés, cmf.

The canon, compact and full of realism and traditional experience, gathers together a group of prescriptions aimed at having the assignment of the duties of religious governance take place within sacred law, religiosity, and perfection, which must never conflict with the necessary technical strictness and seriousness.[1]

1. *The addressees* of the prescriptions of the canon are the superiors and subjects, with emphasis on one or the other according to each norm in particular.

Likewise, all the prescriptions have application in elections and appointments, though some prescriptions might be more important for some superiors and subjects than for other superiors and subjects.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 135–141; idem, *Los superiores religiosos según el Código. Guía de súbditos y de superiores* (Madrid 1985), pp. 90–94.

2. As for its *obligatory nature*, the entire group possesses a common imperative force, which comes from being a universal law of the Church, unequivocal in binding terms. In particular, those prescriptions that are clearly established in the external forum stand out.

Some, in contrast, their fulfillment being possible in the mere internal forum or conscience, are binding because they deal with canon law regarding religious consecrated life, directed at people who freely profess perfection and exquisiteness in their relationship with God. About these prescriptions, it can be said that they possess a special moral duty superior to the others, though the former might have less binding juridical power, which necessarily is always external, social, and verifiable.

3. *Observe the norms of the universal law.* In every case, the following canons must be observed in particular and with propriety: *a*) cc. 164–179 and 180–183, regarding elections and postulancy, respectively; *b*) cc. 184–196, regarding loss of office; *c*) cc. 617–641; and *d*) other norms that, pursuant to c. 145 § 2, might define aspects of the duties of a superior.

4. *Observe the laws of one's own institute*, especially in reference to the personal requirements of offices. The prescription is a specific application of cc. 698 § 2 and 578. The constitutions, directories, and possible decrees that the competent authority will have been able to issue for the creation of some offices will be utilized.

5. *Refrain from any type of abuse.* This is maximally required of the superiors who, for performing labors of governance by exercise of power, could be closest to this possibility: non-observance of the law, favoritism, lobbying for votes, intimidation, exploitation of office, campaigning, manipulation, attacks against qualified candidates, etc.

6. *Refrain from any type of favoritism.* This is of a similar scope and rationale as the prior prescription, and of a similar form whose transgression would bring prejudicial consequences for fraternal familiar life. Partiality toward others is classically defined as "iniustitia qua praefertur persona personae, propter causam indebitam," which, applied to our case, means an act for which someone, by ignoring the dignity of the candidate required by the law. This is focused exclusively on the condition of the person arising from the person's influence, nobility, affection, sympathy, friendship, etc. The Law's aversion to favoritism is evident in cc. 524, 830 § 2, and 1181, among others.

7. *Have one's thoughts fixed on God alone.* This prescription is justified quite especially by the nature of the people for whom it is intended, consecrated persons, and it is equally imperative for subjects and superiors. It is the God of consecration and profession, mentioned in the most important contexts of the law of religious, as in cc. 574 § 1, 573 § 1, 602, 618, 662–664, 673–675, 691, etc.

8. *Look out for the institute's best interests.* A norm inseparable from the preceding one, and equally directed at superiors and subjects. Particularly incisive, because everyone must unite around the moderating responsibility of the superior their common aspiration for the good of the institute (cf. c. 618). For its classification and breadth, as well as for its power of attraction and influence on all the rest of the norms, perhaps it should have been at the head of this group of prescriptions contained in the canon.

9. *Appoint or elect those they consider truly worthy in the Lord.* As a logical consequence of having God before their eyes, this norm equally affects superior and subjects. This applies both in elections and appointments, introducing the issue in a biblical atmosphere in which the leaders of the people of God were worthy in the Lord, for whose designation was unhurriedly prayed for, so as to discover divine will in this regard. To consider someone worthy in the Lord, and to discover that others, with the same rectitude of behavior, consider a different person to be worthy, and perhaps those people win the election, is extraordinarily healthy as a lesson in humility, in order to not confuse their own judgment or opinion with that of God or of other people.

10. *Appoint or elect those they consider truly suitable in the Lord.* This norm is barely distinguishable from the preceding norm. Between the two they come to indicate very well the gravity of the content, which, on the other hand, cannot not lead to doubt if one turns to the prescription of c. 149 § 1.

11. *Avoid the direct and indirect winning of votes for oneself as well as for others.* Referring to the case of elections, as specifying the same norm, it is unequivocal in its reprobation of a possible ambitious mentality, aspiring to command.

Canonical tradition has always considered this attitude a grave matter. The *CIC*/1917 established severe penalties for offenders. The underlying reasons for the prohibition were the following:

a) it negatively affects the essential freedom to vote and interferes with elections;

b) it is a manifest sign of ambition and lack of humility;

c) if it comes to assume forms of bribery, it can injure the law and natural equity, as well as the right of every community to elect the most worthy person.

627 **§ 1. Ad normam constitutionum, Superiores proprium habeant consilium, cuius opera in munere exercendo utantur oportet.**

§ 2. Praeter casus in iure universali praescriptos, ius proprium determinet casus in quibus consensus vel consilium ad valide agendum requiratur ad normam can. 127 exquirendum.

§ 1. Superiors are to have their own council, in accordance with the constitutions, and they must make use of it in the exercise of their office.

§ 2. Apart from the cases prescribed in the universal law, an institute's own law is to determine the cases in which the validity of an act depends upon consent or advice being sought in accordance with can. 127.

SOURCES: § 1: c. 516 § 1; *PC* 14
§ 2: c. 105

CROSS REFERENCES: § 1: cc. 587 §§ 1–3, 608, 620, 734
§ 2: cc. 127, 687, 734

COMMENTARY

Domingo J. Andrés, cmf.

With extreme clarity the norm imposes the existence of councils for superiors, with the binding precision by which is scrupulously determined the group of cases in which the superior needs the action of the council for the validity of the acts.[1]

1. As *justification* for the necessity of this ordinary organization democratically representative of the community and imposed as an aid to all the personal superiors, it is sufficient to cite its secular tradition, its best results, and its unarguable reception by the proper laws of all the institutes.

Indirectly, in view of its structure, the legislator invalidates the unfounded claim of turning the community into a council, in every case, and for every issue. He has revalidated the traditional council.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 141ff; A. GUTIÉRREZ, "Commentarium II-de superiore eiusque consilio," in *Commentarium pro Religiosis et Missionariis* 66 (1985), pp 325–335.

The traditional council is not called to take over, but to condition and collegially amplify the personal power of the superior, and to be a guarantee of objectivity, impartiality, collaboration, and prudence in religious governance, especially when it is a matter of special importance, gravity, or of general interest.

2. *The norm of the constitutions* in this regard fundamentally must regulate three points:

a) the existence of the council and its establishment at all levels;

b) its perceptive utilization by all the superiors, in all the cases where it is prescribed by the proper or universal law;

c) the indication of the most grave cases of action by the council, especially for the validity of the acts relative to the superior; other cases can be stated in the directories or inferior norms.

3. *The establishment of the council* and the obligation of utilizing it are clearly stated as precepts by the imperative Latin words "habeant" and "oportet," which leave no doubt about its necessity.

Proper means that each council is bound to a superior, that there cannot be a wandering or errant council without a superior, or a superior without a proper council.

The obligatory nature of its utilization binds the superior and affects the exercise of power, but without changing in any way, the nature and essential characteristics of such power. This clearly demonstrates that the superior is outside of and above the council, there being two distinct organs of governance, though joined to each other.

4. There continues debate over whether the superior votes or does not vote in the sessions of the council. This is reflected in some sectors of the teaching of the Church, motivated in some cases by the complete singular character of religious institutes. However, it has been definitively resolved by the absolute response of the Code Commission, which had been consulted about whether an ecclesiastical superior who was bound by the law to seek the council's consent or deliberative vote, could cast a vote together with the components of the council. This is in conjunction with the meaning of c. 127 § 1. The Code Commission responded negatively, specifying moreover that the superior cannot do so even to break a possible tie.[2]

5. *Cases of action by the council prescribed by the CIC* are expressly and directly those stated in cc. 638 § 3, 647 §§ 1–2, 656, 3°, 665 § 1, 684 § 1, 686 §§ 1 and 3, 688 § 2, 689 § 1, 690 §§ 1–2, 694 § 2, 697, 3°, 699 §§ 1–2, 703.

2. *AAS* 77 (1985), p. 171. Cf. D.J. ANDRÉS, "Adnotationes ad resp. Pont. Comm CIC authentice interpretando ... de superiore eiusque consilio," in *Apollinaris* 58 (1985), pp. 424–450.

Other cases, implicit and very possible, by analogy or by consecrated jurisprudence or by practice and comparative proper Law of religious, are signified by cc. 580, 581, 584 § 1, 587 § 4, 609 § 1, 616 § 1, 641, 657 § 2, 668 §§ 2 and 4, 684 § 1, 695 § 2.

It is always a matter of the most grave and complex issues and, in all those cases constituted by the first bloc, the proper law cannot prescribe to the contrary, abrogating or repealing them, save dispensation from the Holy See.

6. The *cases of actuation for the council to determine according to proper law.* The concise norm in this regard allows us to see that what is prescribed is the enumeration in the proper law of the cases in which, *ad validitatem*, the deliberative or consultative vote of the council is necessary, in accordance with the procedures and solemnities of c. 127,so that the superior can act.

Apart from this canon, and respecting its substance, there is room in the proper law for:

a) adding some cases of *collegial* actuation by the superior's council;

b) declaring that, despite the fact that it has prescinded from the council, an act remains lawful and not invalid;

c) clarifying that, in order to act, the superior can choose not to follow all of the procedures in c. 127.

628 **§ 1. Superiores, qui iure proprio instituti ad hoc munus designantur, statis temporibus domos et sodales sibi commissos iuxta normas eiusdem iuris proprii visitent.**

§ 2. Episcopi dioecesani ius et officium est visitare etiam quoad disciplinam religiosam:
1° monasteria sui iuris de quibus in can. 615;
2° singulas domos instituti iuris dioecesani in proprio territorio sitas.

§ 3. Sodales fiducialiter agant cum visitatore, cui legitime interroganti respondere tenentur secundum veritatem in caritate; nemini vero fas est quoquo modo sodales ab hac obligatione avertere, aut visitationis scopum aliter impedire.

§ 1. Superiors who are designated for this office by the institute's own law are at stated times to visit the houses and the members entrusted to them, in accordance with the norms of the same law.

§ 2. The diocesan bishop has the right and the duty to visit the following, even in respect of religious discipline:
1° the autonomous monasteries mentioned in can. 615;
2° the individual houses of an institute of diocesan right situated in his territory.

§ 3. The members are to act trustingly with the visitor and are bound to reply to his lawful questions truthfully in charity. It is not lawful for anyone in any way to divert members from this obligation or otherwise to hinder the scope of the visitation.

SOURCES: § 1: c. 511
§ 2,1°: c. 512 § 1,1°
§ 2,2°: c. 512 § 1,2°
§ 3: c. 513 § 1; *ET* 25

CROSS REFERENCES: § 1: cc. 608–612, 619, 622, 687, 734
§ 2: cc. 368, 376, 612, 616 § 3, 625 § 2, 683, 734, 1224 § 1
§ 3: cc. 734

COMMENTARY

Domingo J. Andrés, cmf.

In the most clear and simplified way the norm regulates the old institution of canonical visitation that the religious superior and the diocesan bishop have the duty and right of carrying out for religious.[1]

Since the norm deals with a completely different matter it does not encompass the episcopal pastoral facultative visitation regulated by c. 683, or the necessary visitations of fraternity and friendship, which superiors and bishops will be able to lavish freely upon the institutes; but it will not be absorbed or eliminated by the latter visits.

1. The *agents* of the visit foreseen here are:

a) The religious superior that the proper law designates, deducing from the term *superior* the internal nature of the visit. For such purposes, the major superior is usually designated, through the attaching of the duty of visitation to the office of major superior without, as we will later see, this being the reason why the visitator is called superior; it can be done personally by the superior or by others.

b) The diocesan bishop is designated here directly by the universal law; even though the visit is his duty and right, it can be effected by the bishops themselves or through a delegate.

2. The *object and ends* of the visit are:

a) the visit of the superior, since it is an extraordinary form of governance, is classified as a form of renewal and impulse of regular observance, not excluded from the apostolic dimension; in general, everything that falls under the power of the superior is a subject of the visit,

b) the episcopal visit has an object and purpose similar to the visit of the superior, for the subject "religious discipline" equals the subject "regular observance," and the apostolate together with regular observance constitutes the essence of the power of an internal religious superior. Nevertheless, everything, with respect to the institutes of diocesan right, that the universal law either does not explicitly grant to the bishop or expressly reserve to the Holy See is not included in his power; something of this is seen in the section that follows.

3. *Intended subjects of the canonical visit*:

a) The religious superior must visit the house and the persons incorporated into the houses; from this base and with this fundamental pur-

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 145–150.

pose, the superior must visit the institute and the larger organisms into which they are divided.

b) The diocesan bishop can and must visit only the autonomous monasteries spoken of in c. 615, but not those that cc. 613 and 614 concern themselves with, nor any others. Likewise, he will visit the houses of the diocesan institute that are located in his territory; but not directly the members themselves. The norm does not say that they are entrusted to him as it does say respecting the religious superior, nor the houses outside his territory that might be of the same institute in question. Nor does the houses of the institutes of pontifical right, nor the institute, nor the provinces if it has them.

4. *The periodicity of the visit*:

a) Respecting the religious superior visitators, the norm provides that the proper law will state the periodicity, which is normally done in very different ways; the importance is that the periodicity be a guarantor of efficacy of the figure of the visit, and security of reference on the part of those visited.

b) The diocesan bishop, though being free to state the times in which he desires to fulfill his obligation and exercise his duty, can imitate quite correctly the periodicity that the proper laws of the religious normally state; but, in any case, he would not be bound by the possible determination in this regard of the proper laws of the interested monastery or institute. It is his duty and right, not that of the monastery or institute.

5. As *obligations for the subjects of the visit* (§ 3), the norm enumerates four. All are juridical, though perhaps less so the first one regarding trustful treatment toward the visitator; all affect the members, not the houses, that is, they are personal; all are grave, according to tradition, in line with the gravity of the visit, with the power of the visitator and with the good or end that every visit pursues.

629 **In sua quisque domo Superiores commorentur, nec ab eadem discedant, nisi ad normam iuris proprii.**

Superiors are to reside each in his or her own house, and they are not to leave it except in accordance with the institute's own law.

SOURCES: c. 508

CROSS REFERENCES: cc. 608, 620, 622, 734, 1396

COMMENTARY

Domingo J. Andrés, cmf.

This canon imposes on all the religious superiors the duty of residing in their own houses, and likewise it prohibits absences that are unjustified or against the proper law, to which is entrusted the establishment of subsequent specifications in this regard.[1]

1. The rationale for the norm is not simply a reaffirmation of the secular obligation of residence attached to those canonical offices that by their nature demand stability and permanent dedication and which without residency cannot be fulfilled. It consists specifically in that, without mentioning its historical importance today, and pursuant to the law now in effect, the religious superior, if not customarily residing in his or her own house, could not fulfill the pastoral obligations contained in cc. 618 and 619, besides other attributions and faculties.

2. The *intended subjects* of the norm are all the superiors at all levels, considered in the strict sense and the broad sense, including visitators while they effect a canonical visit and whose house is, then, the visited house.

Nevertheless, it is evident that the same norm is not as equally constrictive for the local superior as it is for the superior general. If the duty of canonical visitation is also imposed on the major superiors (cf. c. 628), and the fulfillment of this duty is for those a form of governing the local communities that are under their office. Evidently both duties will have to be harmonized. This fact alone makes notably different the way of applying the norm, depending on whether it is the local or major superior.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 152ff.

3. *Lawful and unlawful absences*. The norm prohibits all unlawful absences of the superior, and who may be absent only pursuant to the proper law, which, likewise, will duly establish the unlawful reasons in conformance with the three levels of superior.

Regarding the lawfulness of absences, in sync with the classical treatise writers, and referring only to the absences that deserve consideration (which are long and frequent), the sources to inspire the propriety of a lawful absence come down to three:

a) necessity, in the many forms that it may take;

b) the importance and quality of the matters to which the superior must attend (referring to the province, the institute, the Church, the State, etc.); and

c) the exceptional circumstances, which can lead, in certain cases, to the superior's being able to govern equally well whether absent or present.

4. The *penalties* against transgressors are expressly stated by c. 1396. The gravity of the norm is thus reaffirmed by the penal protection that the legislator wanted to grant to an asset so necessary for religious life. The penalty, according to the gravity of the breach, on prior warning, could even be removal from office.

630 **§ 1. Superiores sodalibus debitam agnoscant libertatem circa paenitentiae sacramentum et conscientiae moderamen, salva tamen instituti disciplina.**

§ 2. Solliciti sint Superiores ad normam iuris proprii ut sodalibus idonei confessarii praesto sint, apud quos frequenter confiteri possint.

§ 3. In monasteriis monialium, in domibus formationis et in communitatibus numerosioribus laicalibus habeantur confessarii ordinarii ab Ordinario loci probati, collatis consiliis cum communitate, nulla tamen facta obligatione ad illos accedendi.

§ 4. Subditorum confessiones Superiores ne audiant, nisi sponte sua sodales id petant.

§ 5. Sodales cum fiducia Superiores adeant, quibus animum suum libere ac sponte aperire possunt. Vetantur autem Superiores eos quoquo modo inducere ad conscientiae manifestationem sibiperagendam.

§ 1. While safeguarding the discipline of the institute, Superiors are to acknowledge the freedom due to the members concerning the sacrament of penance and the direction of conscience.

§ 2. Superiors are to take care, in accordance with the institute's own law, that the members have suitable confessors available, to whom they may confess frequently.

§ 3. In monasteries of nuns, in houses of formation and in more numerous lay communities, there are to be ordinary confessors, approved by the local Ordinary after consultation with the community. There is, however, no obligation to approach these confessors.

§ 4. Superiors are not to hear the confessions of their subjects unless the members spontaneously request them to do so.

§ 5. The members are to approach their Superiors with trust and be able to open their minds freely and spontaneously to them. Superiors, however, are forbidden in any way to induce the members to make a manifestation of conscience to themselves.

SOURCES: § 1: cc. 521 § 3, 522; CodCom Resp. III, 20 nov. 1920 (*AAS* 12 [1920] 575); *PC* 14; *LMR* II: 11
§ 2: c. 518 § 1; SCRSI Decr. *Dum canonicarum legum*, 8 dec. 1970, 3 (*AAS* 63 [1971] 318)
§ 3: c. 520 § 1; SCRSI Decr. *Dum canonicarum legum*, 8 dec. 1970, 4b, d (*AAS* 63 [1971] 318)
§ 4: c. 518 §§ 2 et 3
§ 5: c. 530 §§ 1 et 2

CROSS REFERENCES: § 1: cc. 220, 612, 642, 664, 734
§ 2: cc. 587, 664, 734, 965–968
§ 3: cc. 134 § 2, 588 § 3, 647 § 1, 659 § 2, 676, 734, 967–974
§ 4: cc. 985, 622, 734, 968 § 2
§ 5: cc. 220, 622, 642, 664, 719 § 4

COMMENTARY

Domingo J. Andrés, cmf.

The norm is very long and relatively detailed because of the delicate nature of the subject; it appears very acceptable and balanced. Given as a fundamental premise, the freedom of religious to confess and to receive spiritual direction, the norm regulates both practices, incorporating them into the responsibility of office of the superiors.[1]

To accomplish this, three basic criteria are established:

a) guarantees for the freedom of the subject;

b) willingness on the part of the superior so that the communities have sufficient suitable confessors available;

c) the law's aversion the figures of confessor-superior and the spiritual director-superior.

1. As regards the scope of the norm, it must be observed that it does not directly impose a frequency of confession, for c. 664 has already done so. Nor does it address spiritual guidance, which is obviously assumed to function.

Referring to the rationale for the norm, the law could not fail to regulate such a delicate and important issue for sanctification, and especially for fraternal life.

2. *Freedom* (§ 1): all the superiors, without exception, must in theory and in practice recognize and defend the freedom of consecrated regarding both practices, for the superiors must be the first guarantors of the members' rights and must govern them as children of God whose dignity and personal freedom must be respected (Cf. 619).

Due freedom is said:

a) for its being obligatory that the superiors recognize it;

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 152–159; M. BABULA, "Il confessore dei religiosi," in *Commentarium pro Religiosis et Missionariis*, 70 (1989), pp. 3–35.

b) for its dealing with persons; and

c) for its being required for the reception of a sacrament and for the declaration of the context most intimate for a person, explicitly protected at least by cc. 220 and 642.

With the proviso without detriment to the discipline of the institute, the norm foresees the possibility that an incorrect interpretation of such a determining defense of the freedom of conscience, frequent and frivolous absences from the house and infractions of the interior norms and discipline could become common among the members of the community. At the same time, this intensely obliges the superiors to abide by the provisions of the following paragraphs.

3. *Make suitable confessors available to the religious* (§ 2). The norm, which contains a certain coercion, requires, on one hand, some number of confessors to facilitate the frequency of confession and freedom of choice of confessor, and on the other, that the confessors be canonically suitable and specific.

The *suitability* has to be:

a) universal, especially pursuant to cc. 967–970 and 974;

b) particular or specific, which must refer to ideal qualities that the confessors have in view of the type of penitent, the age of the penitents and of the confessors, the spirit and experience of the confessors, the duration of the job, acceptance by the community, etc.

4. The *ordinary confessors* (§ 3): It is supposed that pursuant to § 2, they must also have the quality of being suitable. This can be defined as those who the local ordinary, after having consulted the interested community, places at its disposal so that its members can confess in an ordinary and habitual manner, at periodic times and on a more or less convenient schedule, so that it is easy for everyone to fulfill the precept of frequent confession formulated by c. 664.

The provision for ordinary confessors is binding:

a) if it is a monastery of nuns, autonomous or not, for their condition of feminine life and cloister;

b) in the houses of formation of every institute, for the psychology, personal situation, and governance of those who live in the monastery; and

c) in every large lay community, because its lay nature and number of members objectively impose on the figure of the confessor. It turns out to be difficult to determine practically what should be understood by "largest," which could leave the norm inoperative in some cases.

5. *Superiors are not obliged to hear the confessions of their subjects* (§ 5). This prohibition is clear and should be interpreted in the strict sense although it only affects liceity.

To prevent the superior's ability to turn information gained in confession in to acts of governance, to guarantee the superior due freedom in governance and to avoid the real and notable difficulty that many find by confessing to one who governs them in the external forum, are the three reasons behind the prohibition.

The exception to the prohibition depends on the subject: it is sufficient that the member manifest the desire to confess to the superior; although no obligation flows from such occurrence on the part of the superior.

6. *The trust of the subjects in their superior* (§ 5). For solid reasons, which the first clause of § 5 *recommends*, for it is not an obligation, is something very close or equivalent to the free and spontaneous spiritual direction with the superior. The recommendation will acquire force for the member to the extent that the superior, in the performance of the office, is given the members confidence by becoming worthy of such confidence.

But it must never be forgotten, in practice, that the qualities required to become a good spiritual director are not automatically identified with the requirements to become a religious superior. These do not necessarily occur in the same person.

Freedom is the same that is required with respect to the sacrament of penance. The superior will do very well in demanding it to a greater degree, for it is an interested party and spiritual direction could also cause difficulties in external governance.

7. *The express prohibition directed toward the superior* (§ 5): with strong terminology and the juridical tone of authentic prohibitions, the superior is prohibited from in any way inducing subjects to open up their consciences. There can be many ways, direct and indirect (*quoquo modo*), all condemned by the norm.

In any case, this does not imply that the superior may not encourage subjects to seek genuine spiritual direction with others, even different superiors.

This prohibition does not affect the so-called disciplinary account, obligatory for all, limited only to aspects of external governance and forum.

ART. 2
De capitulis

ART. 2
Chapters

631 **§ 1. Capitulum generale, quod supremam auctoritatem ad normam constitutionum in instituto obtinet, ita efformetur ut totum institutum repraesentans, verum signum eiusdem unitatis in caritate evadat. Eius praecipue est: patrimonium instituti de quo in can. 578, tueri et accommodatam renovationem iuxta ipsum promovere, Moderatorem supremum eligere, maiora negotia tractare, necnon normas edicere, quibus omnes parere tenentur.**

§ 2. Compositio et ambitus potestatis capituli definiantur in constitutionibus; ius proprium ulterius determinet ordinem servandum in celebratione capituli, praesertim quod ad electiones et rerum agendarum rationes attinet.

§ 3. Iuxta normas in iure proprio determinatas, non modo provinciae et communitates locales, sed etiam quilibet sodalis optata sua et suggestiones capitulo generali libere mittere potest.

§ 1. The general chapter which possesses supreme authority in an institute according to the constitutions, is to be composed in such a way that, representing the whole institute, it becomes a true sign of its unity in charity. Its principal functions are to protect the patrimony of the institute mentioned in can. 578, to foster appropriate renewal in accordance with that patrimony, to elect the supreme Moderator, to deal with more important matters, and to issue norms which all are bound to obey.

§ 2. The composition of the general chapter and the limits of its powers are to be defined in the constitutions. The institute's own law is to determine in further detail the order to be observed in the celebration of the chapter, especially regarding elections and the matters to be treated.

§ 3. According to the norms determined in the institute's own law, not only provinces and local communities, but also any individual member may freely submit their wishes and suggestions to the general chapter.

SOURCES: § 1: *MG*: 568–570; *PC* 14; *ES* II: 1–3, 18, 19; SCRSI *Index articulorum pro redigendis Constitutionibus* (1978): "De Capitulo Generali"
§ 2: *PC* 4
§ 3: *PC* 4, 14; *ES* II: 4

CROSS REFERENCES: cc. 119, 590 § 2, 625 § 1, 636 § 1

COMMENTARY

Francis G. Morrisey, omi

Having discussed superiors and their councils, the Code now turns its attention in canons 631–633 to those various participatory bodies which enable members to take part in the governance of their institutes.[1] The principles guiding the revision of the law for institutes of consecrated life had stressed the importance to be given to participation of the members in the governance of their local and provincial communities, as well as in that of the entire institute.[2] Among the various bodies referred to in these canons, there are the general and provincial chapters, community assemblies, general and provincial committees, and similar gatherings.[3] Canon 631 refers to the general chapter.

I. NATURE AND FUNCTION OF THE GENERAL CHAPTER (§ 1)

1. *Nature of the general chapter*

The general chapter is a collegial body. It follows then that all members are equal and, except in the case of elections which are governed by

1. Cf. M. M. MODDE, "Religious Houses and Governance," in J. HITE-S. HOLLAND-D. WARD (eds.), *A Handbook on Canons 573–746* (Collegeville 1935), pp. 89–95.
2. Cf. *Comm.* 2 (1970), pp. 168–181; 5 (1973), pp. 47–69; 7 (1975), pp. 63–92; J. BEYER, "De Institutorum vitae consecratae novo iure," in *Periodica* 63 (1974), pp. 145–168; 179–222; 64 (1975), pp. 363–393, especially pp. 153ff.
3. Cf. "Natura e finalità dei Capitoli generali," in *Informationes SCRSI* 2 (1976), pp. 215–227.

other norms, "provided a majority of those who must be summoned are present, what is decided by an absolute majority of those present has the force of law" (cf. c. 119, 2°). For this reason, the superior general is bound by the outcome of capitular decisions.

When it is in session, the chapter is the supreme internal authority of the institute, without prejudice to the authority of the pope as determined in canon 590 § 2.[4] Since the general chapter is an extraordinary governmental organism, it exercises its authority on a temporary basis, that is, while it is in session. Consequently, its members do not remain in office until the next chapter.[5] Indeed, if the chapter were a permanent institution, the authority of the superior general would be greatly diminished.

Unless it is otherwise provided, the ordinary authority of the superior general and council remains intact during the chapter, and those matters which pertain to their office are not discussed in the chapter assembly.

The constitutions will determine the extent of the chapter's authority, that is, which matters fall under its competence, and these can vary from one institute to another. Thus, for instance, in some religious institutes, the establishment or suppression of provinces is referred to the general chapter; while, in others, this pertains to the superior general and council.

There are two types of general chapter. The ordinary chapter is held at fixed intervals according to when the constitutions and elections are held. The extraordinary one is held when convoked by the superior general to consider particular questions (for instance, the union or fusion of one institute with another). Normally, no elections are held during an extraordinary general chapter, unless the superior general were to resign during the meeting. In this case, it would automatically become an ordinary chapter.

In former times, the ordinary general chapter had two parts: the chapter of elections and the chapter of affairs.[6] The 1983 Code no longer makes this distinction. Consequently, each institute is free to determine the timetable for the chapter, as well as the order of questions to be examined. Thus, for instance, unless these points are spelled out in the constitutions or if changes are proposed, elections might take place only after certain issues have been resolved, such as determining the number of counselors to be elected, the duration of their mandate, the election of major officers, etc.

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4. Cf. SCRSI, Letter , June 27, 1973, in *Canon Law Digest*, vol. 9, p. 342; also cf. SCRSI, Letter, March 5, 1977, ibid., pp. 343–344.
5. Cf. SCRSI, Letter, March 16, 1973, in ibid., vol. 8, p. 339, no. 7.
6. Cf., e.g., SCRSI, Letter, November 28, 1970, in ibid., pp. 330–331.

Today, because of changing circumstances, many institutes feel the need to introduce modifications in the constitutions on occasion of a chapter. Since such changes must be approved before they can become effective, it would ordinarily be necessary to wait until the next chapter to implement them. This is not recommended from a practical point of view. For this reason, a superior general who foresees that the chapter intends to propose changes in the constitutions, can request from the Holy See (in the case of a pontifical institute) approval in principle for the changes to become effective immediately, provided at least two-thirds of the capitulars are in favor of the proposal.[7] In this way, those changes which were considered necessary could be introduced without delay.

2. *The duties of the general chapter*[8]

Canons 631 lists five duties of the general chapter:

a) *to protect the patrimony of the institute.* This is done by evaluating the institute's fidelity to its charism and mission (cf. c. 578).

b) *to foster appropriate renewal of the institute.* If such renewal is necessary, it is to be carried out keeping in mind the nature of the institute, its purposes, spirituality, character and sound traditions. It must also take into account the needs of the Church, realistic possibilities for realization, and the situation of the places where the members carry out their mission.

c) *to elect the superior general and the council.* The constitutions will spell out conditions for eligibility (cf. c. 625 § 1), as well as the number of councilors to be elected. In some institutes, the bursar and the general secretary are elected. In others, because of the special mission attached to these offices, the incumbents are appointed after the chapter by the superior general with the consent of the council (cf. c. 636, § 1).

d) *to deal with matters of greater importance.* Among these, we could mention initial and on-going formation, the apostolic availability of the members, possibilities of union or fusion with another institute, financial administration, the spiritual and community life of the institute, and so forth.

e) *to issue norms.* In addition to proposing changes in the constitutions, the chapter may also approve changes in book II (rules, statutes, complementary code, and so forth), examine the specialized directories (on formation, finances, government, etc.), establish policies, express desires, and so forth. These decisions bind the members of the institute.

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7. Cf. ibid., p. 331.
8. Cf. "Les chapitres généraux depuis le Concile (Premier bilan)," in *Informationes SCRIS* 3 (1977), pp. 83–100.

II. COMPOSITION OF THE CHAPTER AND ITS SESSIONS (§ 2)

1. *Composition*

The Code provides that the chapter must be representative of the entire institute (cf. c. 631 § 1).[9] The number of ex officio members is not determined, nor the number of delegates to be elected or appointed. This will depend on circumstances. Nevertheless, common practice suggests that the delegates elected by the chapter be at least as numerous as the delegates determined by law. For this reason, a formula for representation should be established which takes into account the geographical distribution of the members, as well as their numbers. Likewise, special categories could be established for specific apostolates, or for age or linguistic groups, according to circumstances.

The general principles governing these points should be mentioned in the constitutions. The exact number of representatives depends either on the directory issued by the chapter or on some other normative document. Indeed, to ensure a certain stability, it is preferable to avoid changing too frequently the form of representation at the chapter, since by doing so, there is a risk that arrangements would be made on the basis of providing for the presence or exclusion of certain persons, and not on objective criteria.

Today, many institutes hold what are known as "open chapters," in which all the members who wish to participate may do so.[10] However, the practice of the Holy See has not been to favor elections by the entire community, except in the case of smaller institutes.[11] Presently, the practice of some institutes is for members who wish to participate in the chapter to volunteer for it; the entire institute then votes on the slate as a whole. Whatever formula is used, it would be important to respect the freedom of the members to vote for persons of their choice, and to protect the secrecy of their votes.

2. *Celebration of the chapter*

Each institute is to draw up a directory spelling out the procedures to be observed in the general chapter, as well as the proper ceremonial.

9. Cf. SCRIS, Letter, March 21, 1971, in *Canon Law Digest*, vol. 8, p. 332.
10. Cf. SCRIS, Letters, March 26, 1980; November 8, 1980; August 24, 1981; July 29, 1982, in ibid., vol. 10, pp. 102–106.
11. Cf., e.g., SCRIS, Letter, July 10, 1972, ibid., vol. 7, p. 480, no. 1. Also cf. SCRIS, Letter, July 5, 1972, in ibid., vol. 8, p. 336, no. 2; Letters, November 8, 1980 and August 24, 1981, in ibid., vol. 9, pp. 356–358.

Ordinarily, since these matters are quite detailed and subject to frequent changes, they are not found in the constitutions. It is for this reason that the Code speaks of the "proper law"; the formula of having a directory for this purpose seems the most appropriate way of proceeding. Nevertheless, if an institute wishes to place a number of these details in its constitutions, it is free to do so. On the other hand, if a directory is prepared, the chapter would have to approve it at the beginning of the assembly.

Ordinarily, there is a steering committee, elected by the capitulars, which is responsible for the flow of the chapter, making adjustments in the timetable, and so forth, subject to the approval of the assembly.

III. PROPOSALS PRESENTED TO THE CHAPTER (§ 3)

The directory (or another document) can spell out the way in which provinces, local communities and individuals can present their wishes and suggestions to the chapter. The canon does not state that the chapter must consider each of the suggestions received since some might not be realistic or possible. The institute could provide that those who wish to make suggestions must present them to the pre-capitular commission before a given date. In the light of the theme chosen for the chapter, the commission would then retain those suggestions which are pertinent. However, to avoid arbitrary selection or exclusion, it often happens that the pre-capitular commission provides all the capitulars with a copy of the suggestions received, including those which were not retained for study during the chapter. This enables any member who feels that the chapter should indeed consider one or more of these suggestions to present them on the floor.

632 ***Ius proprium*** **accurate determinet quae pertineant ad alia instituti capitula et ad alias similes coadunationes, nempe ad eorum naturam auctoritatem, compositionem, *modum procedendi* et tempus celebrationis.**

The institute's own law is to determine in greater detail matters concerning other chapters and other similar assemblies of the institute, that is, concerning their nature, authority, composition, procedure and time of celebration.

SOURCES: SCRSI *Index articulorum pro redigendis Constitutionibus* (1978): "Modus exercendi auctoritatem in Religionibus"

CROSS REFERENCES: c. 617

COMMENTARY

Francis G. Morrisey, omi

This canon refers to other chapters and assemblies in the institute, distinct from the general chapter. A clear distinction is made between chapters and other assemblies. While the chapter is a collegial body, with the consequences foreseen in law, assemblies have greater freedom in procedures relating to discussions and decision-making.

Some institutes hold provincial and local chapters. Much depends on the nature of the institute. The Code leaves to the proper law, and not necessarily to the constitutions, to provide for such chapters.[1]

In particular, if a provincial chapter is held, the proper law should determine the relationships between the chapter and the provincial superior. Ordinarily, to favor the principle of personal authority held by superiors (cf. c. 617), it is the provincial superior who has the highest authority in the province, not the provincial chapter.

Sometimes, the provincial chapter has a very limited role, which is to elect delegates to the general chapter and to discuss proposals to be presented at this chapter.[2] In other institutes, the provincial chapter elects the provincial superior and the council. If, however, these persons are elected, the confirmation of the superior general is required for the election to take effect (cf. c. 625, § 3). Sometimes, the chapter is mandated to

1. Cf. SCRIS, Letter, July, 1973, in *Canon Law Digest*, vol. 8, p. 341.
2. Cf. SCRIS, Letters, November 24, 1975 and June 26, 1978, in ibid., pp. 364–365.

develop and approve a provincial directory, which does not become effective unless approved by the superior general and council.

When a local chapter is held (as in the case of monasteries of nuns), proper law should determine precisely who has the right to vote, especially in relation to members who are on a temporary transfer. When the number of electors is quite small, one vote can have a significant influence. It should also be carefully established in what matters the chapter acts as a collegial body, and when it acts simply as a deliberative or consultative organism, with the superior having the right to take the final decision (for instance, in cases relating to admission to the novitiate and to profession, to the transfer of members, major expenses, approval of the statutes of the monastery, and so on).

Canon 632 lists five points concerning provincial and local assemblies, which must be addressed in the proper law:

a) *the nature of the assembly* Is it a collegial body, or a deliberative one which cannot bind the superior, or is it merely a consultative body?

b) *its authority* The law will determine what type of confirmation is required before decisions and recommendations become effective.

c) *its composition* It is easiest to allow more members to participate at the provincial level, where they are relatively few in numbers, and eligibility to participate in such assemblies should be clearly determined beforehand.

d) *its procedures* It should be decided whether the assembly proceeds by majority vote or by consensus; in the first case, what majority is required?

e) *the time of celebration* Sometimes, these assemblies are held immediately before and after the general chapter In other institutes, they are held each year, or every two or three years, depending on circumstances.

633 § 1. **Organa participationis vel consultationis munus sibi commissum fideliter expleant ad normam iuris universalis et proprii, eademque suo modo curam et participationem omnium sodalium pro bono totius instituti vel communitatis exprimant.**

§ 2. **In his mediis participationis et consultationis instituendis et adhibendis sapiens servetur discretio, atque modus eorum agendi indoli et fini instituti sit conformis.**

§ 1. Participatory and consultative bodies are faithfully to carry out the task entrusted to them, in accordance with the universal law and the institute's own law. In their own way they are to express the care and participation of all the members for the good of the whole institute or community.

§ 2. In establishing and utilising these means of participation and consultation, a wise discernment is to be observed, and the way in which they operate is to be in conformity with the character and purpose of the institute.

SOURCES: § 1: *PC* 14; *ES* II: 18
§ 2: *ES* II: 4, 12, 13

CROSS REFERENCES: —

COMMENTARY

Francis G. Morrisey, omi

1. *Other participatory bodies* (§1)

The Code allows each institute to establish, according to need, various participatory bodies such as commissions, councils, or working groups. For instance, we often find in an institute a formation committee for initial and on-going formation, a finance committee, groupings for the apostolate, and so forth.

These bodies can be established both at the generalate level for the entire institute, and at the provincial level, or even within a province itself.

When a commission is established, the following should be foreseen:

a) who are the members and how is the person in charge designated?

b) its mandate: for instance, is it a standing committee, or a select committee established to study a particular question?

c) the duration of the mandate: when dealing with a standing committee, how are the members replaced?

d) how does it render an account of its work and when should reports be presented?

The canon indicates that these bodies should have as their objective to foster the cooperation of all the members for the good of the whole institute (or of the community, depending on circumstances). Arrangements should be made for the membership on such committees to rotate, so that the same persons are not always selected to be on them.

2. *The functioning of such bodies* (§ 2)

This paragraph offers some wise principles to assist those in charge when establishing such commissions. They should take into account, for example, distances to be covered, costs, and the other duties of the members.

In an international institute, it would be important to avoid giving the impression that the purpose of commissions is to keep the airlines in business. For this reason, the Code speaks of "wise discernment."

It must be noted that, today, religious show less enthusiasm for such commissions than they did previously (for instance, in the years immediately following the Second Vatican Council). If the number of meetings and gatherings is multiplied, there is the risk of having them lose their impact and, as a consequence, their usefulness.

These three canons leave almost full responsibility for these matters to the institute. We do not find detailed norms relating to the organization and celebration of chapters and assemblies. The reason for this is quite simple There is such a diversity of institutes, as far as the number of members, geographical distribution, and the manner of proceeding are concerned. These canons respect entirely the autonomy of each institute by not reserving to the legislator those points which are not essential for the proper functioning of chapters and assemblies.

ART. 3
De bonis temporalibus eorumque administratione

ART. 3
Temporal Goods and their Administration

634 **§ 1. Instituta, provinciae et domus, utpote personae iuridicae ipso iure, capaces sunt acquirendi, possidendi, administrandi et alienandi bona temporalia, nisi haec capacitas in constitutionibus excludatur vel coarctetur.**

§ 2. Vitent tamen quamlibet speciem luxus, immoderati lucri et bonorum cumulationis.

§ 1. Since they are by virtue of the law juridical persons, institutes, provinces and houses have the capacity to acquire, possess, administer and alienate temporal goods, unless this capacity is excluded or limited in the constitutions.

§ 2. They are, however, to avoid all appearance of luxury, excessive gain and the accumulation of goods.

SOURCES: § 1: cc. 531, 1495 § 2; *PC* 13
§ 2: *PC* 13; *PO* 17

CROSS REFERENCES: cc. 621, 638, 1259–1298

COMMENTARY

Francis G. Morrisey, omi

1. *Juridical personality*

This canon begins the discussion of temporal goods in religious institutes and places in the first paragraph the general principle concerning this material, by virtue of which each religious institute, by the fact that it

has been established, is a juridical person.[1] The same applies to provinces,[2] as defined in canon 621: "A union of several houses which, under one superior, constitutes an immediate part of the same institute, and is canonically established by lawful authority."

However, the principle does not apply automatically to what are known as vice-provinces or sectors within provinces (for example, "delegations"). When an institute establishes these types of divisions, their juridical status must be determined. Groups of provinces do not enjoy juridical personality in virtue of the law (for instance, all the European provinces of an international institute).

As far as houses are concerned, the question is rather complicated. By tradition, there are two types of houses: "houses" in the canonical sense of the term, and "residences." The 1983 Code does not make this distinction; rather, it speaks about "constituted" houses (c. 608) and "established" ones (c. 609). For it to be established canonically, a house must first be constituted, but each constituted house is not by that very fact an established house.

We could also note that the "canonical" house is not necessarily identified with the building where the community resides.

One of the practical difficulties we meet is to determine which local communities are considered to be established houses, especially when a number of religious live alone for reasons of the apostolate, but are grouped together to constitute a local community.

Another difficulty consists in determining whether it was the local house which had been canonically established, or the work to which the house was attached (for instance, a school, a hospital, etc.). It would be helpful to clarify these situations .[3]

The canon does not state that it is the major superiors of the institutes who have the right to establish juridical persons. It is the law itself which grants this qualification to the institute, to provinces, and to houses. It seems that for the time being, only bishops and higher Church authorities can establish juridical persons.

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1. Cf. V. DE PAOLIS, "Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life," in *The Jurist* 43 (1983), pp. 343–360. Also cf. *Comm.* 5 (1973), pp. 53–55; 12 (1980), pp. 175–185.
2. Cf. Comité Canonique des Religieux, "Les biens temporels et leur administration," in *Directoire canonique* (Paris 1986), pp. 231–235.
3. Cf. J. P. GALLEN, "Is the Work of a Religious House considered to be the same Canonical Moral Person as that House?" in *Review for Religious* 27(1968), pp. 553–559.

2. *Acquisition, possession, administration and alienation of goods*

Goods may be acquired according to the prescriptions of canons 1259–1272.

As far as possession of goods is concerned, it is possible that, in a given institute, only established houses would have this right. This will depend on the constitutions.

The right of "possessing" goods could be compared to the right of "retaining" them, as mentioned in canon 1254. It might have been preferable, though, had the Code used the same word throughout, but in practice it seems that the two terms have the same meaning.

The constitutions of some institutes limit the right of possession of provinces, and especially of houses, by determining that all surplus funds are to be given on a regular basis to the next higher unit for the good of the institute. In some communities, even the right of possession does not exist. The goods belong either to the Holy See, or to syndics who hold them in trust.

To illustrate the right of ownership, article 151 of the 1999 Constitutions of the Missionary Oblates of Mary Immaculate prescribes as follows: "The Congregation as such, Provinces, Delegations, and canonically established houses, have the right to acquire, retain, administer and alienate property in accordance with the Church's common law. In the case of established houses, however, this right is limited; the limits are fixed by the Provincial in Council." Rule 151a adds: "The special statute of Missions, district communities, and residences will determine whether they have the right to acquire, retain, administer, and alienate property."[4]

Canons 638 §§ 1–2 and 1273–1289 deal with the administration of temporal goods.

As for alienation, canons 638 §§ 3–4 and 1290–1298 treat of this topic (see commentary on c. 638).

3. *Witness of poverty*

According to canon 634 § 2, these juridical persons will avoid all appearance of luxury, excessive gain and the accumulation of goods. If there are surplus funds, they should be used for works of charity and for other works of the apostolate. It is difficult to evaluate what constitutes a criterion relating to appearance. It would be advisable to take into account local circumstances when considering the situation.

4. Cf. R. JACQUES, "Posséder en pauvreté: le droit de propriété d'une congrégation," in *Praxis juridique et religion* 3 (1986), pp. 205–216.

635 **§ 1. Bona temporalia institutorum religiosorum, utpote ecclesiastica, reguntur praescriptis Libri V De bonis Ecclesiae temporalibus, nisi aliud expresse caveatur.**

§ 2. Quodlibet tamen institutum aptas normas statuat de usu et administratione bonorum, quibus paupertas sibi propria foveatur, defendatur et exprimatur.

§ 1. Since the temporal goods of religious institutes are ecclesiastical goods, they are governed by the provisions of book V on 'The Temporal Goods of the Church', unless there is express provision to the contrary.

§ 2. Each institute, however, is to establish suitable norms for the use and administration of goods, so that the poverty proper to the institute may be fostered, defended and expressed.

SOURCES: § 1: c. 1497 § 1
§ 2: c. 532 § 1; *PC* 13; *ES* II: 23

CROSS REFERENCES: cc. 493, 718, 741, 1257

COMMENTARY

Francis G. Morrisey, omi

1. *General principle*

The norms applicable to the administration of goods in religious life are specified here. Canon 635 applies the principle of canon 1257: the temporal goods of religious institutes are ecclesiastical goods, regardless of their situation in civil law (separate incorporation, company, trust, etc.). Because they are ecclesiastical goods, they are governed by the principles of book V, unless it is provided otherwise.

Parallel norms are found in canons 493, 718 and 741.

The proper law of each institute could determine particular norms regarding the acquisition and administration of goods. If these norms are part of the approved constitutions, they would take precedence over the general principles of canon 635 § 1, because this canon provides for exceptions.

We must distinguish clearly between the temporal goods of religious institutes and goods which are entrusted to the institute for a given period of time but without implying ownership. Thus, institutions such as schools

treasurer, and, where possible, this person will not be the local superior. The second interpretation conforms to canonical tradition (cf. *CIC*/1917 c. 516 § 3). However, small communities have great difficulty today finding a bursar. It is perhaps for this reason that the wording was changed, for this leaves greater latitude at the local level.

Although the canon does not say so explicitly, the bursar, according to canonical tradition, is a member of the institute. However, there is nothing preventing the appointment of another person as accountant or bookkeeper, but it seems preferable that it be a member of the institute who is responsible for the administration of the temporal goods belonging to the juridical person. The constitutions could spell out the qualifications required to be a bursar in the institute.

In future, though, it probably will be necessary to make certain adjustments, especially in smaller institutes. We could easily foresee a group of bursars who would render this service to a number of institutes. Some institutes already have centralized financing. The bursar oversees the administration of all the temporal goods belonging to the institute and to its parts. Both practices raise difficulties, but it seems that what counts most is that the goods be well administered.

The canon states that the bursar will be "constituted" according to the institute's proper law. This covers either an election or an appointment. The Code leaves the door open, but the details must be found in the proper law of the institute (not necessarily in the constitutions).

The bursar administers the goods under the direction of the respective superior. In other words, it is the superior who determines policies, not the bursar. In practice, the Holy See has been asking that the words "and council" be added after "superior" when determining the financial policies governing the institute, the province, or the local community.

2. *Obligation to render account*

Canon 636 § 2 contains a general principle regarding the obligation of rendering an account of one's administration. No specific timeframe is determined, this is left to each institute. Much will depend on the government level involved (local, provincial, regional, etc). We often find that local bursars are to submit monthly or three-month reports, while provincial bursars submit their accounts every six months or every year, and the treasurer general presents a regular report to the superior general and council, as well as to the general chapter.[1]

1. On this subject, cf. J.J. DANAHER, "The New Code and Catholic Health Facilities: Fundamental Obligations of Administrators," in *The Jurist* 44 (1984), pp. 143–152.

637 **Monasteria sui iuris, de quibus in can. 615, Ordinario loci rationem administrationis reddere debent semel in anno; loci Ordinario insuper ius esto cognoscendi de rationibus oeconomicis domus religiosae iuris dioecesani.**

Once a year, the autonomous monasteries mentioned in can. 615 are to render an account of their administration to the local Ordinary. The local Ordinary also has the right to be informed about the financial affairs of a religious house of diocesan right.

SOURCES: cc. 535 § 1, 1°°, 535 § 3, 1°°, 1519 § 1

CROSS REFERENCES: cc. 1265, 1287

COMMENTARY

Francis G. Morrisey, omi

Relations with the local Ordinary regarding economic matters are regulated here. The annual report that autonomous monasteries must submit each year to the local Ordinary resembles the one prescribed in canon 1287. The proper law could determine whose approval is required before this report is presented: for instance, that of the local council, the local chapter, etc.

In the case of institutes of diocesan right, the Ordinary has the right to be informed of the financial situation of a house in the diocese. Although the canon speaks of the financial situation of a house, and not of the entire institute, it seems that this report would cover all the houses which are in the diocese.[1]

Although canon 637 does not make it obligatory for institutes of diocesan right, the diocesan bishop (or the local Ordinary) could require a report before authorizing a fundraising campaign (or similar activity) on behalf of the religious involved (c. 1265).

Pontifical institutes are not subject to the local Ordinary for financial matters. He, therefore, does not have the right to require a financial report, although nothing prevents an institute from giving one to the bishop if it wishes to do so (for example, bishops are studying the financial situation of religious institutes to assist those that are truly in need and they would need to have figures available in order to determine this need).

1. Concerning the right of bishops to evaluate the religious of diocesan right, see R.L. KEALY, *Diocesan Financial Support: Its history and canonical status* (Rome 1986), p. 333.

638 **§ 1. Ad ius proprium pertinet, intra ambitum iuris universalis, determinare actus qui finem et modum ordinariae administrationis excedant, atque ea statuere quae ad valide ponendum actum extraordinariae administrationis necessaria sunt.**

§ 2. Expensas et actus iuridicos ordinariae administrationis valide, praeter Superiores, faciunt, intra fines sui muneris, officiales quoque, qui in iure proprio ad hoc designantur.

§ 3. Ad validitatem alienationis et cuiuslibet negotii in quo condicio patrimonialis personae iuridicae peior fieri potest, requiritur licentia in scripto data Superioris competentis cum consensu sui consilii. Si tamen agatur de negotio quod summam a Sancta Sede pro cuiusque regione definitam superet, itemque de rebus ex voto Ecclesiae donatis aut de rebus pretiosis artis vel historiae causa, requiritur insuper ipsius Sanctae Sedis licentia.

§ 4. Pro monasteriis sui iuris, de quibus in can. 615, et institutis iuris dioecesani accedat necesse est consensus Ordinarii loci in scriptis praestitus.

§ 1. It is for an institute's own law, within the limits of the universal law, to define the acts which exceed the purpose and the manner of ordinary administration, and to establish what is needed for the validity of an act of extraordinary administration.

§ 2. Besides Superiors, other officials designated for this task in the institute's own law may, within the limits of their office, validly make payments and perform juridical acts of ordinary administration.

§ 3. For the validity of alienation, and of any transaction by which the patrimonial condition of the juridical person could be adversely affected, there is required the written permission of the competent Superior, given with the consent of his or her council. Moreover, the permission of the Holy See is required if the transaction involves a sum exceeding that which the Holy See has determined for each region, or if it concerns things donated to the Church as a result of a vow, or objects which are precious by reason of their artistic or historical significance.

§ 4. For the autonomous monasteries mentioned in can. 615, and for institutes of diocesan right, the written consent of the local Ordinary is necessary.

SOURCES: § 1: c. 1527 § 1
§ 2: c. 532 § 2
§ 3: cc. 534 § 1, 1533; SCCouncil Resol. 12 iul. 1919 (*AAS* 11 [1919] 416–419); *PM* 32; *CAd* 9; SCR Decr. *Religionum laicalium*, 31 maii 1966, no. 2 (*AAS* 59 [1967] 362); *SCCong* Litt. circ., 11 apr. 1971 (*AAS* 63 [1971] 315–317)
§ 4: cc. 533 § 1, 1°°, 534 § 1

CROSS REFERENCES: cc. 1277, 1291–1295, 1303–1307

COMMENTARY

Francis G. Morrisey, omi

1. *Extraordinary administration*

When the Code uses words such as "limits" and "manner" in canon 638 § 1, it provides a means of distinguishing between ordinary and extraordinary administration. This could complete canon 1277.

Acts which are not repeated on a regular basis, or acts which exceed a predetermined amount as spelled out in the proper law, or acts for which the proper law or the universal law requires special authorization before they can be carried out, could be acts of extraordinary administration.

The list of acts of ordinary and extraordinary administration need not be in the constitutions of the institute; it could be found elsewhere (as, for instance, in the rules, the finance directory, etc.).[1]

In addition, according to canon 638, proper law can determine the formalities required for the validity of an act of extraordinary administration. These formalities can differ according to the level where the act originates (for instance, at the local, provincial or generalate level). In practice, an act which exceeds a given amount must be approved beforehand by a higher authority, unless it is one carried out at the generalate level.

Generally speaking, the following acts are recognized as being acts of extraordinary administration:

— to accept of recognize an inheritance, donation, etc., which carries with it certain conditions;

— to purchase immovable goods;

1. Cf. Comité Canonique des Religieux, "Les actes d'administration ordinaire et extraordinaire," in *Directoire canonique* (Paris 1986), pp. 239–241.

— to sell, exchange, mortgage or remove from the place for which they were destined, works of art, historical documents, or other moveable goods of significant value;

— to sell, exchange, mortgage immovable goods, or accept an easement on the property beyond the period determined by the bishops' conference;

— to borrow large sums of money on a temporary basis (for example, to pay employees while awaiting the arrival of government grants);

— to build, demolish or rebuild a church or to carry out major repairs;

— to establish a cemetery;

— to enter into a court case.

These criteria were established by the Sacred Congregation for the Propagation of the Faith on July 21, 1856, and have served well for over 140 years.[2]

2. *Ordinary administration*

According to canon 638 § 2, superiors and other officers can validly carry out, within the limits of their office, acts of ordinary administration.

These officers could be the assistant superior, the bursar, and sometimes the person named in charge of certain works. In some institutes, two signatures are required for certain transactions; however, this is usually by virtue of the corporate bylaws rather than because of canonical prescriptions.

In speaking of officers, the Code uses the term "designated" to allow as much freedom as possible. The only requirement is that one or more persons be appointed or elected to carry out acts of administration.

By law, the superior can carry out acts of administration, but the exercise of this right is usually reserved to the bursar, especially at the provincial and generalate levels.

3. *Alienation*

Canon 638 § 3 applies to religious institutes the norms of canons 1291–1295. This paragraph treats of acts of alienation and of any transac-

2. Cf. F. DEMERS, *The Temporal Administration of the Religious House of a Non-exempt Clerical Pontifical Institute* (Washington 1961), p. 56.

tion by which the patrimonial condition of the juridical person (house, province, institute) might be jeopardized.[3]

The written permission of the competent superior (as determined in the proper law of the institute) is required.

Moreover, the consent of the council is also required. In some instances, more than one council is involved: the local council, the provincial council, and even the general council, depending on the nature of the act and the sums involved.

The permission of the Holy See is required if the transaction involves a sum exceeding that which has been determined for the region. It should be noted that this canon makes no reference to the bishops' conference.[4] The Holy See can apply the sum determined by the bishops (which is ordinarily the case) or it can establish a different scale for religious (because of large institutions, for example).

If the Holy See has not determined for the region a specific sum applicable to religious, then the amount approved for bishops would apply. However, it often happens that a province is situated in one territory and the generalate in another, and that different maximum amounts have been authorized for each. Sometimes it is said that the generalate can authorize only the amount determined for the region where it is situated, even if at the provincial or local levels, a higher amount is in effect. However, in practice, it seems that the higher sum can be used, either that which is in effect in the territory where the alienation will take place, or that which applies in the territory of the generalate.

For canonical purposes, the following acts are considered to be acts subject to the prescriptions governing alienation, even if each act is not necessarily subject to the formalities prescribed for major alienations (depending on the amount of money involved):[5]

a) any act where title of property or the right to property is transferred to another person (keeping in mind the exceptions to be noted below);

b) the use of stabilized (or immovable) goods, in whole or in part, for a purpose other than that for which these goods were stabilized. For example:

— conveyance of money and investments if this money or these investments formed part of the stable patrimony of the institute;

3. Cf. Comité Canonique des Religieux, "Les aliénations des biens," in *Directoire canonique*, pp. 241–244.

4. Cf. *Comm.* 12 (1980), pp. 177–182.

5. Cf. F. G. MORRISEY, "Conveyance of Ecclesiastical Goods," in *Proceedings of the 38th Annual Convention* (Canon Law Society of America 1976), pp. 123–137.

— withdrawal of money or investments from the fixed capital of an institute;

— conveyance of money or its equivalent, such as stocks, bonds, bank notes, certificates of deposit, and the like, received from the sale of property that formed part of the stable patrimony of the institute;

— conveyance of money or securities received in the form of annuities contingent upon payment of certain annual sums;

— conveyance of money or securities accruing from pious foundations, Mass foundations, bursaries, endowments, annuities, and the like, particularly if the obligations have not been acquitted;

— conveyance of money and securities being diverted from specific purposes for which they were originally acquired;

c) any act which is a preparation for conveyance, such as giving security, a mortgage, an option, compromise, settlement;

d) in general, any act by which church property is subjected to burdens either *in perpetuum* or for a long time, such as granting the use, the usufruct, or easements of various kinds, again subject to the explanations to be given below;

e) sale of precious works or of notable relics;

f) according to some canonists, establishing a trust would also constitute an alienation since the goods are no longer at the sole disposition of the juridical person; and

g) carrying out acts which could lessen the patrimonial condition of the juridical person; for instance, transferring to others the right to take decisions in relation to the governance of institutions (hospitals, schools, etc.) belonging to the institute; to contract debts, to mortgage properties, etc.[6]

Keeping in mind these general categories, there are nevertheless a number of acts which would not be considered to be governed by the norms for alienation, or at least would not be subject to the formalities required for major alienations:

a) spending free capital; it does not matter what the purpose of the transaction is. Under "free capital" we generally include ordinary income and unrestricted movable gifts for operating expenses or capital improvements;

b) transfer of goods from one ecclesiastical juridical person to another, if both are part of the same religious institute (for example, from a house to a province, from one province to another); or transfers when a

6. Cf. The Catholic Health Association Of The United States, *The Dynamics of Catholic Identity in Healthcare*, (Saint Louis 1987), p. 52.

juridical person is divided (new religious province, etc.) or is united to another (suppression of a parish, house, etc.);

c) registering assets under a new title; separate incorporation of a mother house, school, hospital, etc., but with the same canonical ownership. Only when the control of the assets of the juridical person is transferred, diminished or endangered would the question of "alienation" enter into play;

d) assuming a mortgage: if a benefactor gives to a juridical person property to which he or she held title, but which is heavily mortgaged, the acceptance of such property does not come under the concept of alienation of ecclesiastical goods, since no ecclesiastical goods were involved in the first place. However, the norms on administration would apply in such an instance;

e) transfer of title for a similar title: the exchange of securities for other securities is generally not governed by the prescriptions on alienation. If, however, title to real estate is transferred, this is alienation in the strict sense, unless the transfer were to be for another piece of real estate of the same value (in which case the situation of the ecclesiastical goods is not jeopardized).

There are, however, differences of opinions regarding the following cases of transfer: Some canonists accept that in cases where the sound administration of the goods of the juridical person requires that it be unburdened of certain pieces of property, such as land which may no longer be used for Church purposes, vacant land being heavily taxed, land creating ill will toward the Church and its credibility on social concerns, etc., the norms on alienation would not be applicable. Personally, I do not agree with this opinion. It seems to me that such instances would give rise to a legitimate cause for alienation (cf. c. 1293), but that the transfer would be subject to the prescriptions governing alienation;

f) conversion of capital assets: in the past, the then Congregation for Religious had often held that the sale of real estate which is part of the stable capital of the institute and the application of the proceeds to another capital purpose, (such as capital construction or reduction or liquidation of a mortgage on buildings, or to a plant fund), did not constitute a conveyance to which canon 1291 § 3 applies, but could be regarded simply as a conversion of capital assets from one form to another.[7] However, examining recent indults, it would appear that this opinion is not followed today by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life which considers these transactions as alienations;

7. Cf. for more details regarding this question, E.L. HESTON, *The Alienation of Church Property in the United States: An Historical Synopsis and Commentary* (Washington 1941).

g) using ecclesiastical goods as collateral for loans: free capital may be used as collateral. Likewise, if a juridical person borrows or sells bonds to construct a new edifice, putting up only the title of the edifice under construction as collateral, this is not the kind of alienation governed by canons 638 § 3 and 1291. However, the general issuing of bonds constitutes a transaction subject to the norms for alienation.

Some canonists also hold that when money is borrowed merely on the general credit of the ecclesiastical corporation, without offering a mortgage or pledge as security, this does not constitute alienation in the sense of canon 1291 § 3. Although this opinion is followed in practice by many dioceses and some religious institutes, I have reservations about the practice;

h) making a loan: often times, lending money is a way of investing it; it would most likely be an act of extraordinary administration, rather than an act of alienation;

i) sale of furniture and equipment: the sale of non-precious furniture to replace it with furniture of greater value or of equal value, is not considered alienation in the sense of canon 1291 § 3;

j) observing the intentions of the donors: money given for a specific purpose must be used for that purpose. It follows that the spending of money, liquidating of securities, or disposal of real estate for the purposes for which it was given by the donors is not an act of alienation regulated by canon 1291 § 3. Thus, if a benefactor willed or gave his or her home and grounds to further apostolic activities of a religious institute, these may be sold and the money used for the apostolic activities of these bodies;

k) curtailment of property rights through negligence; permitting the process of prescription would not be alienation because there is no contract; however, it could be classified as bad or poor administration and must be avoided (cf. c. 1289).

For instance, an ecclesiastical juridical person could let the neighborhood children use the grounds as a public park and create such expectations or attitudes as will make it morally impossible, or at least extremely difficult, for that person ever to exercise the rights of ownership in relation to the land in question. Nevertheless, it seems that this is not an alienation of property.

l) refusal of gifts; the refusal to accept a gift or a profit is not considered an alienation of ownership since ownership is not transferred; it is merely not acquired. However, the prescriptions of canon 1267 § 2 regarding permission must be observed before a gift is refused.

m) acceptance of foundations: the norms for accepting foundations (cc. 1303–1307) should be carefully applied; and

n) involuntary surrender of property: limitations imposed on the right of usage of land does not constitute alienation, provided this restric-

tion of rights is imposed by public authorities. The same could be said in the case of expropriations of land, hospitals and educational institutions.

The file to be presented to the Holy See (preferably in three copies) when requesting permission for alienation should include the following:

— the formal letter of request from the superior requesting the indult;

— explanation of the just cause (c. 1293 § 1);

— the consent of the council (from the minutes) (c. 1292 § 1)

— other precautions prescribed by particular law (c. 1293 § 2);

— a brief history of the property; intentions of donors; whether the buildings are listed as historical properties, etc. Sometimes, it is useful to include a map of the lands involved;

— evaluation by experts (c. 1293 § 1,2°);

— a statement concerning goods (c. 1292 § 3);

— the offer to purchase (if it concerns a sale) (c. 1294 § 1);

— the "nihil obstat" from the diocesan bishop; for diocesan institutes, a letter of consent;

— a statement of what is to be done with the money received (c. 1294 § 2);

— sometimes a statement regarding the observance of secular law formalities (cf. c. 1296).

If it is foreseen that the sale will take place in the near future, but there is not yet a firm offer to purchase, permission in principle to sell the property can be requested from the Holy See. When the offer is finalized, it is then a relatively easy matter to notify the Holy See of the price involved and to obtain definitive permission.

It sometimes happens that the Holy See issues an indult authorizing an institute to accumulate debts up to a given amount, without the obligation of having recourse each time for permission to contract new debts as long as they do not exceed this amount.[8]

Finally, canon 638 § 3 refers to objects which are precious because of their artistic or historical value and to objects donated to the Church as the result of a vow. In relation to these, see canon 1292 § 2.

8. For instance, cf. CICLSAL, Prot. no. 87640/91, August 10, 1991, authorizing a pontifical institute sponsoring a number of hospitals in the United States of America to accumulate debts up to a maximum of $100,000,000.

4. *The intervention of the Ordinary*

Paragraph four does not mention which specific acts require the written consent of the local Ordinary, but from the context it is clear that the canon is referring to those acts mentioned in canon 638 § 3: alienations beyond a determined amount and acts whereby the patrimonial condition of the juridical person could be jeopardized.

For pontifical institutes, the permission of the local Ordinary is no longer required. However, in practice, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life requires a letter from the bishop stating that he has no objection to the alienation. In writing the letter, the bishop should be careful not to imply that he thus assumes financial responsibility for the transaction.

In fact, it would be good to insist on this point. When the local Ordinary grants his written permission for monasteries and diocesan right institutes, and not a *nihil obstat* as in the case of goods belonging to pontifical institutes, he should clearly state that he assumes no financial responsibility for the transactions being considered. He is simply authorizing these acts after a prudent evaluation of the situation.

639 **§ 1. *Si persona iuridica debita et obligationes* contraxerit etiam cum Superiorum licentia, ipsa tenetur de eisdem respondere.**

§ 2. Si sodalis cum licentia Superioris contraxerit de suis bonis, ipse respondere debet, si vero de mandato Superioris negotium instituti gesserit, institutum respondere debet.

§ 3. Si contraxerit religiosus sine ulla Superiorum licentia, ipse respondere debet, non autem persona iuridica.

§ 4. Firmum tamen esto, contra eum, in cuius rem aliquid ex inito contractu versum est, semper posse actionem institui.

§ 5. Caveant Superiores religiosi ne debita contrahenda permittant, nisi certo constet ex consuetis reditibus posse debiti foenus solvi et intra tempus non nimis longum per legitimam amortizationem reddi summam capitalem.

§ 1. If a juridical person has contracted debts and obligations, even with the permission of the Superior, it is responsible for them.

§ 2. If individual members have, with the permission of the Superior, entered into contracts concerning their own property, they are responsible. If, however, they have conducted business for the institute on the mandate of a Superior, the institute is responsible.

§ 3. If a religious has entered into a contract without any permission of Superiors, the religious is responsible, not the juridical person.

§ 4. However, an action can always be brought against a person who has gained from a contract entered into.

§ 5. Religious Superiors are to be careful not to allow debts to be contracted unless they are certain that normal income can service the interest on the debt, and by lawful amortization repay the capital over a period which is not unduly extended.

SOURCES: § 1: c. 536 § 1
§ 2: c. 536 § 2
§ 3: c. 536 § 3
§ 4: c. 536 § 4
§ 5: c. 536 § 5

CROSS REFERENCES: cc. 1281 § 3, 1284 § 2,5°, 1289, 1291

COMMENTARY

Francis G. Morrisey, omi

1. *Responsibility of the juridic person* (§ 1)

Canon 639 § 1 applies, for instance, in the case of a province, with the permission of the provincial superior, authorizing a construction project. If, however, the general administration refuses the required authorization and the province decides nevertheless to proceed with the project, the province is responsible for it. However if, in practice, a province had to declare bankruptcy, the entire institute might have to come to its aid to prevent a greater evil.

Evidently, it is important to determine as much as possible what is the legal responsibility of a province for its separately incorporated apostolates. If the distinctions between the separately incorporated works of a province and the province itself are clear, it follows that the responsibility of the province would also be clear.[1]

When there are two or more separately incorporated juridical persons, it is preferable to use distinct addresses, separate councils of administration or boards, and distinct letterheads, to avoid the risk of identifying the two.

2. *Individual members* (§ 2)

Canon 639 § 2 distinguishes two types of acts carried out by the religious:

— acts relating to personal patrimony;

— acts carried out on behalf of the institute.

The bursar who acts with the appropriate authorizations is not personally responsible for errors or losses, unless there was gross negligence or malice on his or her part. If the bursar is authorized to carry out certain acts, the institute could not then seize the personal patrimony of the bursar to cover any losses occasioned by these acts.

If, on the other hand, an individual religious, even with permission, carried out acts related to personal patrimony (for instance, the sale of personal property), the institute is not responsible for these transactions. In passing, we could mention that it would be good to verify whether the

1. Cf. A.J. MAIDA and N. CAFARDI, *Church Property, Church Finances, and Church-related Institutions* (Saint Louis 1984), pp. 201–205.

institute's liability insurance covers instances when personal or family goods are being used, as, for instance, when a religious drives a car which belongs to the family.

3. *Individual responsibility* (§ 3)

The norm found in canon 639 § 3 corresponds to that of canons 1281 § 3, 1289 and 1296.

A religious who has entered into a contract without permission of the superiors is responsible for it and not the institute. The contract could concern the goods of the institutes or those of one of its juridical persons.

If, however, the religious has no personal goods, it is of little avail to sue in civil court for recovery of damages (unless insurance policies cover such activities).

4. *Court cases* (§ 4)

As is the case with canons 1281 § 3, canon 639 § 4 allows an action against a person who would have benefited from a contract which was not authorized according to canonical norms.

5. *Payment of debts* (§ 5)

As canon 1284 § 2, 5° prescribes, superiors are not to authorize debts unless it is prudently foreseen that normal income can service the interest on the debt and that by lawful amortization the capital can be repaid over a period which is not unduly extended.

The canon does not specify a period of time for the repayment of debts. In the case of construction of a new building, its life expectancy could be taken into consideration. In general, a period of 25 years would not be considered too long in such a case. However, in others, a period of seven years would be sufficient (the purchase of furniture, an automobile, etc.).

The norm in this canon is a prudential one and does not affect the validity of loans. However, it is based on common sense and sound administrative practices.

640 **Instituta, ratione habita singulorum locorum, testimonium caritatis et paupertatis quasi collectivum reddere satagant et pro viribus ex propriis bonis aliquid conferant ad Ecclesiae necessitatibus et egenorum sustentationi subveniendum.**

Taking into account the circumstances of the individual places, institutes are to make a special effort to give, as it were, a collective testimony of charity and poverty. They are to do all in their power to donate something from their own resources to help the needs of the Church and the support of the poor.

SOURCES: c. 537; *PC* 13; *PO* 17

CROSS REFERENCES: c. 1285

COMMENTARY

Francis G. Morrisey, omi

Canon 1285 allows juridical persons to make gifts for charitable purposes. Canon 640 establishes a parallel norm for religious institutes.

In 1987, the Holy See referred to this canon when it requested religious institutes to come to its assistance at a time of financial need.

In practice, institutes and their parts determine in advance a percentage to be allotted to works of charity. Superiors should not forget, however, that their first responsibility is to see to the security of their members.

CAPUT III
De candidatorum admissione et de sodalium institutione

ART. 1
De admissione in novitiatum

CHAPTER III
The Admission of Candidates and the Formation of Members

ART. 1
Admission to the Novitiate

641 **Ius candidatos admittendi ad novitiatum pertinet ad Superiores maiores ad normam iuris proprii.**

The right to admit candidates to the novitiate belongs to the major Superiors, in accordance with the norms of the institute's own law.

SOURCES: c. 543

CROSS REFERENCES: cc. 137 § 1, 587, 597, 646ff, 620, 656 § 3, 658, 720–721, 735

COMMENTARY

Domingo J. Andrés, cmf

The norm specifically sets the right of admission to the novitiate—not postulancy or profession—by determining that the organ of governance that has and exercises that right is the major superiors. Neither local superiors nor the councils, nor the chapters, nor superiors foreign to the institute can set the rights of admission to the novitiate.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 252ff; idem, "De admissione ad novitiatum (cc. 641–645) et de admissiones in Institutum (c. 597)," in *Commentarium pro Religiosis et Missionariis* 65 (1984), pp. 379–384; CICLSAL, "Direttive sulla formazione negli Istituti religiosi. Testo italiano e Commento," in *Informationes* SCRSI 16 (1990), p. 254.

1. The *rationale* for this norm requires the following to be appropriately distinguished: *a*) the pure right conferred, which is based on the nature of the free society that make up the institutes; and *b*) the conferring on the major superiors, which presupposes that they alone have the qualities necessary and sufficient to execute the canonical act of admission.

2. The *right of admission* is organically combined with c. 597, which declares the juridical nature of admission and the fundamental requirements of the candidate.

It is a right that excludes every kind of juridical obligation, except that of having to admit only those worthy and suitable pursuant to law.

Indirectly, the right of admission necessarily implies the right not to admit, although the norm omits this second right.

3. The *admission* to the novitiate must be understood as referring exclusively to cc. 642–653, which define and give structure to the canonical novitiate.

Regarding admission to the stages prior to the novitiate, whatever it is called, the Code does not determine anything. But it is evident that those who are admitted to these stages must prudently face the requirements dictated for admission to the novitiate (cc. 656, 3° and 658 deal with admission to successive professions).

4. The *major superiors* must be understood pursuant to c. 620; likewise their vicars, without excluding the vicar of the local major superior of monasteries *sui iuris*.

A classic problem is found by the possible delegation of this right: *a*) speaking theoretically, since the right is annexed to ordinary executive power, it is delegable, completely or in part, for a single act or in the general (cf. 137 § 1); and *b*) specifically, nevertheless, it does not seem that it can be lawfully delegated habitually and for all cases, for it is not permitted that the superior systematically delegate a delicate function, important and relatively frequent, that has been conferred upon the superior precisely because of the presumption of possessing the required qualities to carry out this task. It is not permitted that there be a discretionally constituted new superior in fact, a situation not foreseen by the universal or proper law.

5. The *norm of the law proper to the institute* here cited and referring to the superiors who admit, must determine, among other things, the following: *a*) which major superiors specifically exercise the right possessed by all; *b*) if the supreme moderator supervises or confirms the admissions effectuated by the rest of the major superiors; *c*) how, when, and under what conditions can the vicars admit; and *d*) how and when do the councils of the admitting superiors intervene.

642 **Superiores vigilanti cura eos tantum admittant qui, praeter aetatem requisitam, habeant valetudinem, aptam indolem et sufficientes maturitatis qualitates ad vitam instituti propriam amplectendam; quae valetudo, indoles et maturitas comprobentur adhibitis etiam, si opus fuerit, peritis, firmo praescripto can. 220.**

Superiors are to exercise a vigilant care to admit only those who, besides being of required age, are healthy, have a suitable disposition, and have sufficient maturity to undertake the life which is proper to the institute. This health disposition and maturity are to be established, if necessary even by the use of experts, without prejudice to can. 220.

SOURCES: SCHO *Notif.*, Nimia facilitate, 1956; *SS* II, III; *SCong* 31, 33, 34; SCR Instr. Religiosorum institutio, 2 feb. 1961, nos. 14–17, 31; SCHO Monitum Cum compertum, 15 iul. 1961, 4 (*AAS* 53 [1961] 571); *PC* 12; *OT* 11; *RC* 11: II–III, 12, 14; *RFIS* 11, 39; Paulus PP. VI, Enc. Sacerdotalis caelibatus, 24 iun. 1967, 63, 65, 71 (*AAS* 59 [1967] 682, 683, 685, 686); *RH* 21

CROSS REFERENCES: cc. 217, 220, 574 § 2, 586 § 1, 597, 620, 642, 643 § 1, 1°, 646, 652 § 2, 656, 1°, 658, 1°, 720–721, 735, 738 § 1

COMMENTARY

Domingo J. Andrés, cmf.

The norm obliges, especially the major superiors, to admit to the novitiate only those who positively possess the four personal qualities that it mentions: necessary age, health, suitable character, and maturity. Endowed with a clearly imperative nature, the canon nevertheless lacks invalidating force for admission contrary to these requirements, due to the complexity of the concepts that define such qualities, which are difficult to state in specific and clear terms.[1]

This is a matter of *personal qualities* that must be had by the candidate, and not a matter of impediments, proofs, or reports.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 255–265; W.K. KIWIOR, "I requisiti soggettivi per l'ammissione al noviziato nell'attuale legislazione canonica (cc. 597 e 642)," in *Commentarium pro Religiosis et Missionariis* 69 (1988), pp. 225–250 and 321–346.

1. The rationale for the norm lies in the public nature of the state to which the candidate wants to accede, in the demands of vitality and survival of the institute, in the good of the Church, in avoiding injury to the candidate because of a delay in making non-admission effective, and in the indisputable necessity that, all in all, the institute must verify the vocation of its aspirants (cf. cc. 574 § 2 and 646).

The global objective of this norm, together with those that follow regarding the impediments or conditions of validity of admission, makes one think that the norm cannot be applied instantaneously, but that it requires a reasonable period of time. Consequently, structures of verification argue for the necessity of conserving or reintroducing postulancy from the popular law, which as such, has disappeared from the Code. (In fact, it can be stated the Church has returned to regulate postulancy, in a certain sense rectifying the Code itself and, in a most correct sense, specifying the concomitant demands that the verification of these personal requirements entails, without whose existence no one could be lawfully admitted to the institute. Such regulation is set out by Instruction *Potissimum institutioni* 42–44).

2. The *vigilance of superiors to exclude* appears in the text as a severe and grave precept, explicable by the avoidable risks already mentioned in the commentary about the rationale for the norm, as well as by the real difficulty of verifying the qualities of health, suitable character, and maturity.

The norm is intended for superiors in general, although evidently the major superiors must be singled out as those directly and finally responsible for admission. The rest can collaborate in this admission or act in other admissions. It is a general responsibility of vigilance, in which not even the members of the institute in general should be excluded.

3. The *age* of the candidate, in relation to character and maturity, has to be a full seventeen years (cf. c. 643 § 1,1°), under penalty of invalidating the admission, due to the duties and obligations of the novitiate which culminate in profession and the assumption of the grave responsibilities of religious life.

By proper law, a higher age can be required, so that those who have not reached it or who have greatly surpassed it cannot be admitted.

Verification of age is effectuated through methods commonly permitted in society, such as a baptismal certificate, birth certificate, etc.

4. The *health* of the candidate must be understood in its biological and psychic dimensions, keeping in mind the unity of the person. It is not so much the lack of illness, but the subjective state of the entire well-being in general of the person, in its physical, spiritual, psychic, social, and familial dimensions.

Prior illnesses now cured are not obstacles to admission, though they might have recurred afterwards. Being healthy at the time of admission is what matters.

Regarding *verification of health*: *a*) normally it is sufficient to present the medical history of the candidate, or the results of a recent check-up; and *b*) in the case of an illness, taking a cure may be chosen, including the intervention of a certain expert, but with scrupulous regard for the candidates good name and the protection of privacy that c. 220 guarantees to the candidate

5. *The suitable character of the candidate*, required by religious ideals and values, is a symbiosis of character, temperament, and personality, in which are found solid a concept of organization, integration, dynamic interaction, and differentiation.

Of the candidate it must be able to be said with certainty that he is naturally religious, spiritual, lacking in egotistical tendencies, well balanced, endowed with psychic and mental normality, and without persistent breakdowns.

Regarding *verification of suitable character*: *a*) a period of suitable time is always required, devoted to living in common and the observation of the candidate; *b*) in normal cases this falls to those in charge of formation, especially if they are sufficiently familiar with psychology and pedagogy; this can be done by utilizing the normal means of verification available to these disciplines; *c*) in pathological cases, the help of an expert will be required, whose intervention must be regarded in light of c. 220, although the institute cannot force the candidate to undergo such treatment, it being a bad policy to condition admission on the opinions of these specialists.

6. *Maturity*. This is not maturity in the abstract, but relative to the candidate's age, the life of the specific institute in which the aspirant intends to enter, and the stage of incorporation to which the aspirant accedes. That is to say, "maturity" here means the capacity of living in the specific environment of the religious institute, but in a dynamic and constructive manner, adapted to the good things that the person is interested in and the ones that have been assimilated, as well as to the bad things and the dangers of those things against which one must defend oneself.

The maturity that the legislator requires here cannot be any other than religious maturity, which certainly must be supported by human maturity (physical, intellectual, emotional, and social), but which must also show the possession of the values, ideals, and characteristics of religiosity in general and of consecrated religious life in particular.

Regarding *verification*, the process is the same as has been described for health and character.

7. The *life proper to the institute* is the crucible in which each and every one of the required qualities will be tested. They must be discerned not in the abstract, but in view of the immediate and future life of one institute and not in another.

8. *Professional intervention and/or exemption from it* are subject to two grave and absolutely unavoidable conditions: *a*) that the necessity of this recourse exists, for if the necessity does not exist, any expert's report is irrelevant; and *b*) that the subjective rights guaranteed by c. 220 remain intact.

This cannot be a matter of just any expert, but one that the mind and Magisterium of the Church, deducible from the sources of the norm, has been shown *with insistent clarity to* be prudent, recommended by moral principles, recognized in the area of specialization, Catholic, experienced, and diligent.

Comparing the exception to the necessity, the following has to be said: *a*) the right of c. 220 is prior and more grave than the possible necessity; *b*) it cannot depend, in its exercise, on the discretional judgment of the superior, as do depend the necessity and the correlative recourse or non-recourse to an expert; and *c*) the right is more universal than the necessity, for, whether or not the necessity exists, whether or not the expert intervenes, right or wrong, in every case, the good name, privacy, and conscience of the candidate must remain intact.

643 **§ 1. Invalide ad novitiatum admittitur:**
1° qui decimum septimum aetatis annum nondum compleverit;
2° coniux, durante matrimonio;
3° qui sacro vinculo cum aliquo instituto vitae consecratae actu obstringitur vel in aliqua societate vitae apostolicae incorporatus est, salvo praescripto can. 684;
4° qui institutum ingreditur vi, metu gravi aut dolo inductus, vel is quem Superior eodem modo inductus recipit;
5° qui celaverit suam incorporationem in aliquo instituto vitae consecratae aut in aliqua societate vitae apostolicae.

§ 2. Ius proprium potest alia impedimenta etiam ad validitatem admissionis constituere vel condiciones apponere.

§ 1. The following are invalidly admitted to the novitiate:
1° one who has not yet completed the seventeenth year of age;
2° a spouse, while the marriage lasts;
3° one who is currently bound by a sacred bond to some institute of consecrated life, or is incorporated in some society of apostolic life, without prejudice to can. 684;
4° one who enters the institute through force, grave fear or deceit, or whom the Superior accepts under the same influences;
5° one who has concealed his or her incorporation in an institute of consecrated life or society of apostolic life.

§ 2. An institute's own law can constitute other impediments even for the validity of admission, or attach other conditions.

SOURCES: § 1,1°: c. 542,1°; *RC* 4
§ 1,2°: c. 542,1°
§ 1,3°: c. 542,1°
§ 1,4°: c. 542,1°
§ 1,5°: c. 542,1°
§ 2: c. 542

CROSS REFERENCES: § 1: cc. 10, 124–126, 610, 620, 641, 642, 646ff., 654, 684, 721 § 1, 2°, 735, 1055–1061
§ 2: cc. 587, 735 § 2, 642

COMMENTARY

Domingo J. Andrés, cmf.

The norm specifically establishes all the cases that, for the universal law, invalidate admission to the novitiate. It confers on the proper law the faculty of establishing other similar cases as a demonstration of its autonomy in a delicate matter, as well as the faculty of adding conditions to all of them. Thus by a different manner, although complementary to the manner of the canon following c. 642, it clears the way negatively for canonical verification of the suitability of candidates for religious life.[1]

1. As the rationale for the norm, the same reasons adduced for c. 642 substantially apply here (see commentary). The radical difference between personal qualities and negative impediments lies in the content as well as—and even especially—in the distinct effects: an act contrary to the impediments has been sanctioned with the invalidity of the relative act of admission that follows it; while this effect does not occur in the absence of all or some of the personal qualities.

2. *Concept of qualification of an impediment*: *a*) in the broad sense, an impediment is a circumstance foreseen by the law that invalidates or makes illegal the juridical act executed by the person who is affected by such a circumstance or impediment; or *b*) in the strict sense, and applied to this case, it is the series of circumstances external to the person who seeks admission that incapacitate or disqualify the person by prescription or judgment of law for the valid realization of the act of admission to the novitiate of a religious institute.

As a *global qualification* of the impediments, the following can be said: *a*) they are impediments, not a lacking of qualities; *b*) they are diriment impediments—affecting validity—not merely impeding, formulated with the technically suitable word to impose a disqualifying and invalidating law (cf. c. 10), in view of which the law does not recognize ignorance or error (cf. c. 15 § 1); *c*) they are of positive universal canon law, not natural, nor revealed law; *d*) they refer strictly to the act of admission to the novitiate, not to any other of the possible admissions that the law can address; and *e*) admission has to be understood passively and in the present, that is, from the effect that it is already *ingress*, because before this only the force of impediment existed, and at the very time of admission, not after or before.

3. *Not having completed the seventeenth year of age* (1°): The rationale is in the internal logic and coherence of the canonical system. It

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 266–274.

would not be reasonable to require complete development, a settled and balanced character, a human maturity before having completed the seventeenth year (cf. c. 642). Moreover, keeping in mind that the novitiate must last a year (cf. c. 648 § 1) and that having completed the eighteenth year is required for the first profession (cf. c. 656,1°), it would not make sense to have admissions before having completed seventeen years.

The norm affects all religious institutes and all of the kinds of entities that can make up an institute. The age requirement has to be fulfilled pursuant to canon, not civil law. The impediment ceases on the day that the required age is reached.

4. *A spouse, while the marriage lasts* (2°), is understood in the strict sense for every form of validity for the duration of the marriage, without excluding those which are simply *rato*. The reasoning is more than obvious, considering the vow of chastity and the demands of marriage.

The impediment ceases through dissolution of the marriage bond by any of the possible means (cf. cc. 1055–1061).

5. *Concurrently binding profession in an institute or incorporation into a society* (3°): several reasons can be adduced, and others can be presupposed, as a rational basis for this impediment: *a*) the defense and reinforcement of the bond of stability attached to profession or incorporation; *b*) the mind of the Church, desiring that the assumed commitment be observed, in its *rationale perpetuitatis*, where it has been assumed and as it has been assumed; and *c*) to avoid the radically profound contradiction into which one used to fall in the case of one already professed, intending to realize another profession essentially identical, but that is accidentally very different upon changing institutes, or intending to incorporate into a society.

The letter of the norm does not encompass eremitism (cf. c. 603) or the order of virgins (cf. c. 604), but it does not seem difficult to be able to extend its meaning and spirit in the proper laws to these two ecclesial conditions of particular consecration also.

The impediment ceases by the dissolution of the bond inherent to profession or incorporation according to the six possible forms of dissolution. The Holy See can remove the impediment through dispensation.

6. *Compulsion through force, fear, or deceit* (4°), in reality is a formulation of six impediments, since each of the three cases can equally affect the candidate and/or admitting superior.

The global rationale is based on the assumption that each vice taken separately, if it is a cause of admission and entrance into the novitiate, invalidates the human act realized by both parties concurrently.

To estimate the scope of each one of these three vices, it is sufficient to apply the text of the canon with the meaning of cc. 124–126: *a*) violence, as an impediment, here comes down to an application of the gen-

eral guarantee regarding juridical acts provided for in c. 125 § 1; *b*) fear, on the other hand, does not follow the general canonical principle formulated in c. 125 § 2, but it constitutes one of the exceptions stated therein, since it determines that an act realized through fear is null; and *c*) deceit, all in all, does not follow the general principle of c. 125 § 2 either; if it becomes error, then c. 126 is followed.

These six impediments only cease by the removal of the reasons that has caused them and by the execution of a complete act, from all the points and parties that intervene, in the conditions of conscience and freedom that the law requires. While the vice persists, dispensation cannot be considered. If the affected person were the superior, another superior would have to be found to realize the admission free of every vice of nullity.

7. *Concealing a previous incorporation* (5°): refers to a religious institute, a secular institute, or a society of apostolic life. It does not refer to eremitism or the order of virgins.

All the possible previous and valid, though hidden, incorporations are encompassed by this norm, but not postulancy or novitiates.

The powerful rationale for this impediment lies in that, for needs of harmony in the canonical system to which they belong, concealment, which will not occur without an express and cunning intention, even involuntary: *a*) contradicts the fulfillment of the requirements of c. 645 regarding recommendations and reports; *b*) creates an immediate and imminent danger that the superior might admit someone through error or deceit (cf. c. 643 § 1,4°); and *c*) hinders the avoidance of the evils that could survive the implicated parties, by the admission of the expelled, the undesirable, and the pernicious.

This impediment can only cease through the following means: *a*) through the effective and crystal clear declaration of the previous incorporations; *b*) through dispensation by the Holy See, not impossible but highly improbable. Logically, instead of applying for dispensation, the interested party could beforehand notify the institute of the preceding state of incorporation or, in the case of bringing an appeal, the Holy See should require the applicant for dispensation to declare it, if desiring admission; and in both cases the impediment will have ceased, without the need for dispensation. It would be fitting here to think about the discovery of concealment—voluntary, but especially involuntary—the person's having already *realized* the novitiate, or being already advanced in the novitiate. A solution would then be an application for validation or ratification of the time transpired, computing it as a valid novitiate.

8. *Possible impediments from proper law* (§ 2): it is important that this faculty be exercised sparingly and with discretion. The possible impediments must show the same nature and purposes as those from the universal law. Criteria for their establishment can be the following: *a*) inspiration in the charism and nature of the institute; *b*) not originating in

mimicry; *c*) imitating the Church, which has pruned many of the impediments that existed in the *CIC*/1917 and continues prescribing that norms should not be established without necessity (cf. c. 587 § 3); and *d*) not committing the folly of creating them in a directory or lesser code and, later, reserving their dispensation to the Holy See. For their dispensation, they must be in the norms of dispensation of the constitutions (cf. c. 587).

644 **Superiores ad novitiatum ne admittant clericos saeculares inconsulto proprio ipsorum Ordinario, nec aere alieno gravatos qui ad solvendum pares non sint.**

Superiors are not to admit secular clerics to the novitiate without consulting their proper Ordinary; nor those who have debts which they are unable to meet.

SOURCES: c. 542,2°

CROSS REFERENCES: cc. 134 § 1, 210, 265, 266 § 1, 273, 620, 646ff, 735 § 2

COMMENTARY

Domingo J. Andrés, cmf.

The norm conditions with force and realism these two admissions, singularly formed by two categories of totally different faithful, united in their fundamental concept but disassociated in the specific motivation that justifies each prohibition to admission.[1]

1. The *nature* of this norm is not that of the impedient impediments, although it might have been so in the *CIC*/1917, but that of mere prohibitions directly aimed at the competent admitting superior, although they are extendible to every other superior who could participate in the admission.

Only indirectly does it affect secular clerics and insolvent debtors.

2. *Consulting the ordinary of a secular cleric.* The norm encompasses deacons and priests who apply for admission, considering only their basic dependency on the ordinary, and not the office that they can be fulfilling;

The consultation is a *grave obligation*, in consideration the tenor of the norm and its justifying reasons; the ordinary still has the freedom of response and opposition, and the consultant has equal freedom of action and/or admission.

If the norm is interpreted in light of the source of the *CIC*/1917, pursuant to c. 21, the cleric would be the one obliged to realize the consultation and to present to the religious superior with the written results. But if

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 274ff.

it is noticed that the norm, having been an impedient impediment now having become a prohibition directed at the religious superior, it will be concluded that the one who is obliged to consult the proper ordinary is the superior. In practice, there are perceptible advantages in the superimposition of both manners of fulfilling the canonical obligation where the recipient is not well defined.

3. Among the *motivations* for this consultation, the following stand out: *a*) the strict obedience that every cleric owes to his ordinary (cf. c. 273); *b*) the obligatory objective prevention on the part of the institute of a late vocation, not aimed at impeding it (for the cleric exercises at his option the fundamental right of every faithful, cf. c. 219) but to verify the vocation in a rather exceptional circumstance; *c*) the good of the particular church in which the cleric is incardinated; and *d*) the cordial relations that must exist between bishops and religious (cf. cc. 678 § 3 and 680).

This obligation ceases through timely fulfillment of all that the norm prescribes, namely, by consulting. It does not seem logical to consider the possibility of a dispensation, since it would be much more complicated than simply fulfilling the duty of consultation.

4. *Insolvent debtors:* are those who, at the time of the petition for admission, not before or after, are charged with a debt they are shown to be unable to pay. At the same time, solvent debtors are not considered in the norm, or those who, for having nothing, would be insolvent, but who are not debtors when they call at the doors of the institute.

It must be added that it must be a debt of *strict justice*, without regard to its amount or source. It must be a *certain* debt, not in doubt or disputed, to creditors with a first and last name that do not consent to the ingress in religion of their debtor. Also it must be a *present debt*, neither from the past, nor forgiven, nor assumed by others.

Insolvency must consist of a total impossibility to liquidate the debt by the candidate, not on the part of others, without excluding the institute that, were it to so desire, faced with candidates with exceptional human qualities and religiously speaking, could contemplate paying the debt itself and thus free the superior of the obligation to not admit the candidate.

5. Among the *motivations* for this prevention and prohibition, the following are noteworthy: *a*) at its base, the natural law; a debtor by justice can only be forgiven by his creditor, b)a religious institute cannot be a refuge or hiding place to escape the payment of debts; and *c*) avoidance of the institute's being prejudiced by extraneous litigation to which it is a stranger.

6. *The prohibition ceases*: *a*) evidently, if the debt ceases, whether by payment or by forgiveness by the creditor; *b*) if the institute carries the debt specifically to free the superior from the prohibition, in which case the prohibition is certainly removed, but not the debt as long as it is not

paid; and *c*) if dispensation from the canon is requested of the Holy See. This at first glance seems possible, although in reality if the Holy See is obliged to require, by being bound by the natural law itself, absolute guarantees that the creditor will not be prejudiced and that neither the Church nor the institute will be prejudiced, the reason can hardly be perceived that could induce the Holy See to grant such dispensation: for the simple reason that with the existence of guarantees, all the reasons to run to the Holy See requesting dispensation have disappeared.

7. As far as the *responsibilities for breach of contract* on the part of the superior, it is important not to forget that *a*) he should incur, for having proceeded with an illegal admission, the penal remedies that his hierarchical superiors might apply, which could be removal from office if the consequent disruptions have been grave; and *b*) as an accomplice, the superior must compensate the creditor for damages that the admission may have caused.

645 **§ 1. Candidati, antequam ad novitiatum admittantur, testimonium baptismatis et confirmationis necnon status liberi exhibere debent.**

§ 2. Si agatur de admittendis clericis iisve qui in aliud institutum vitae consecratae, in societatem vitae apostolicae vel in seminarium admissi fuerint, requiritur insuper testimonium respective Ordinarii loci vel Superioris maioris instituti, vel societatis, vel rectoris seminarii.

§ 3. Ius proprium exigere potest alia testimonia de requisita idoneitate candidatorum et de immunitate ab impedimentis.

§ 4. Superiores alias quoque informationes, etiam sub secreto, petere possunt, si ipsis necessarium visum fuerit.

§ 1. Before candidates are admitted to the novitiate they must produce proof of baptism and confirmation, and of their free status.

§ 2. The admission of clerics or others who had been admitted to another institute of consecrated life, to a society of apostolic life, or to a seminary, requires in addition the testimony of, respectively, the local Ordinary, or the major Superior of the institute or society, or the rector of the seminary.

§ 3. An institute's own law can demand further proofs concerning the suitability of candidates and their freedom from any impediment.

§ 4. The Superiors can seek other information, even under secrecy, if this seems necessary to them.

SOURCES: § 1: c. 544 § 1
§ 2: c. 544 §§ 3 et 4; SCR-SCSUS Decr. *Consiliis initis*, 25 iul. 1941 (*AAS* 33 [1941] 371); SCR Instr. *Religiosorum institutio*, 2 feb. 1961, 45
§ 3: cc. 542, 544 § 6
§ 4: cc. 544 § 6, 545 § 4; SCR Instr. *Quantum Religiones*, 1 dec. 1931, 6 (*AAS* 24 [1932] 76); *RFIS* 41

CROSS REFERENCES: § 1: cc. 641–642, 646ff, 735 § 2, 875–878, 894–896, 1389
§ 2: cc. 134 § 2, 241, 265–266 § 1, 620, 643 § 1, 3°, 736 § 2
§ 3: cc. 642, 643, 678, 735 § 2
§ 4: cc. 620, 735 § 2

COMMENTARY

Domingo J. Andrés, cmf.

Rounding out the issue of admission to the novitiate and opening more channels for full knowledge of the candidates, there are added to the requirements three kinds of *certifications* (§ 1), other *certificates* in reference to four special categories of candidates (§ 2), and some *reports* that can be required either by the proper law (§ 3) or on the initiative of the superior (§ 4).[1]

1. The *gravity* of this bloc of prescriptions and tasks can be revealed by two observations: *a*) at its core is the latent principle of the law that maintains the obligatory nature of the laws given to guard against a general danger of disrupting the common good, despite that, in individual cases, said danger might not exist or be remote. To avoid it with certainty, security, and efficacy, certain precepts must be imposed on everyone; *b*) an unlawful admission—invalid or illicit, in conformance with the norms of cc. 641–645—always rests on, in one form or another, the responsibility and competence of the interested superior. Sometimes, it can imply abuse of power or of ecclesiastical office, which can or should be punished according to the gravity of the relative act or omission (cf. c. 1389 § 1); and since these omissions might be able to be derived with extreme facility and be damaging to third parties, he can also be penalized with a just sanction, not excluding removal from office, in proportion to the culpability in the negligence (cf. c. 1389 § 2).

2. The *certificates of baptism, confirmation, and of free status*, must be presented by the candidate; likewise, it falls to him and not to the institute to gather them together. And reflecting on this, it can be said that the superior has the duty and faculty to require them and, correlatively, the obligation not to admit the candidate if he does not present them.

Powerful reasons of harmony in the system make the case for justification of the requirement to provide certificates of *baptism* and *confirmation*: *a*) radical coherence to the manner of religious and consecrated life to which the candidate aspires (cf. cc. 573 § 1 and 607 § 1); *b*) without the basic and mature condition of the faithful, he cannot suitably aspire to publicly belong to the life and sanctity of the Church. The certifications will be issued, in descending order, by the local parish where he should have been baptized, or where he was baptized in fact, or by the local ordinary; or failing that, by a declaration of an adult witness free of every suspicion; or by a sworn statement of the candidate himself. In the last

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 278–286.

instance, the superior must open an investigation to arrive at a moral certainty of his reception of baptism.

The certificate of *free status*, required by the obligation of celibacy and obedience, will be issued by the parish or the local ordinary (cf. c. 535 § 2); failing that, complementary ways will be followed similar to those described for baptism and confirmation. In conformance with the documentary sources of the norm, *free status* will refer to: *a*) freedom, especially, from canonical marriage; *b*) freedom from civil marriage; and *c*) freedom from any other commitment similar to a matrimonial commitment that in some way binds the candidate by natural or civil law.

3. *Testimonies for the admission of clerics, members of institutes or societies, and seminarians* (§ 2). These are, for obvious reasons, especially reasonable and justified. The admitting superiors must require them, but there is no obstacle to their being solicited and presented by the interested parties themselves.

Subjects that will be dealt with by said reports, among other possibilities are the following: *a*) birth, habits, talent, life, reputation, condition, and knowledge; *b*) if he is under a penal or administrative investigation; *c*) if he is affected by any ecclesiastical censure, irregularity, or impediment; and *d*) if his family needs help.

5. *Further reports demanded by proper Law* (§ 3). While the previous reports were *universal*, but *special* for dealing with three particular categories, these are *proper*, that is, they can be issued by the proper law of each institute, although referring or referable to all the categories of candidates.

The rationale for this faculty lies in the following: *a*) demands of the individuality of each institute; *b*) to cover gaps that might have been left by the previous reports; *c*) to confirm the lack of impediments; and *d*) in every case to positively assure in the best possible manner the verification of the suitability of the candidate.

5. *Possible supplementary reports sought by the Superior* (§ 4). Besides all the forms of verification of suitability established in the preceding paragraphs and even by the canons of all article 1, the legislator grants the superior the subjective faculty of requiring other reports, subject to the need for them; and, if he believes it opportune, they can be obtained in secret;

The difference between the preceding reports and these is clear: *a*) the first are formal, required ex officio, binding in law, documentary, signed, necessarily given conscientiously by the issuers; *b*) the second ones are informal, optional, even oral, not necessarily issued by authorities; and *c*) if the first are sufficient to confirm the suitability of the candidate, the second are irrelevant, but the inverse cannot be concluded, no matter how much one tries to reach that confirmation by subjective and facultative methods.

ART. 2
De novitiatu et novitiorum institutione

ART. 2
The Novitiate and the Formation of Novices

646 **Novitiatus, quo vita in instituto incipitur, ad hoc ordinatur, ut novitii vocationem divinam, et quidem instituti propriam, melius agnoscant, vivendi modum instituti experiantur eiusque spiritu mentem et cor informent, atque ipsorum propositum et idoneitas comprobentur.**

The novitiate, by which life in an institute begins, is ordered to these ends: that the novices come to a better awareness of their divine vocation, particularly the vocation proper to the institute, that they experience the institute's manner of life and form their minds and hearts in its spirit, and that their resolution and suitability are tested.

SOURCES: c. 565 § 1; SCRSI Decr. *Sacra Congregatio*, 7 iul. 1956, 6 § 1; *ES* II: 33; *RC* 4, 5, 13: I–II

CROSS REFERENCES: cc. 577, 578 § 1, 597, 602, 604 § 1, 605, 610 § 1, 642–645, 652, 660, 665 § 2, 670, 676, 719 § 1, 721, 722 § 1, 735, 737

COMMENTARY

Domingo J. Andrés, cmf.

The norm imposes a definition of novitiate with a compact description of its constitutive end, being inspired in the confluent interests of the institute and novitiate. The reach of this canon is great. In harmony with the canons of article 1, which precede it, it is the basis for the interpretation of the remaining canons of article 2.

1. The *rationale* for the norm, perfectly constructed, is expressive of its cardinal importance. If a society is its ends, and the same occurs with

juridical institutes, the novitiate must exist and be structured in conformance with its ends. These ends, since they are determining of all its structure and functioning, are imposed as duties that are inalterable and pursuable jointly by superiors, those giving formation, and novices.[1]

2. *The nature of a novitiate* consists in, and is derived from being, the beginning of religious life in the specific institute to which the novice accedes. It is a matter of a condition, mode, or special state in which the novices come to know themselves. The beginning is historical or temporary, but, especially, pedagogical and progressive for the novice and the institute.

The monastic and religious tradition is extraordinarily rich in the explanation of this *beginning as a breaking-off* from the prior life, utilizing for this purpose the categories of liberation, death and resurrection, selective ascension, transcendence, and the supernatural. *Potissimum institutioni* 45–47 emphasizes this line of thinking.

It is the same life that coherently explains the norms regarding the cognizable experiential aspects and of the experience of the institute, contained in cc. 650 § 1, 651 §§ 1 and 3, and 652, among others.

3. *Purposes of the novitiate*

a) A *better understanding of the vocation* by novices, whose vocation is illuminated through the vocation given by and proper to the institute. In all fairness, this objective precedes the others, for if the vocation does not exist or does not become duly verified, the attempt to reach subsequent ends will lack sense; but this, in turn, will facilitate the discernment of the vocation both for the novice and for the institute.

It is a genuine *divine vocation*: the law, though being extremely cautious in requiring the testing of its external signs, emphatically affirms the divine origin of the vocation.

It is a vocation *proper to the institute*, an extremely important specification that indicates the following: *a*) the subjective conception of the novice is not the point of vocational reference, but rather it is the specific conception of the institute itself; and *b*) a duty by which the personal vocation is adapted to the institutionalized vocation and confirmed by the Church in said institute. Canons 577, 578 § 1, 605 and 652 § 2, among others, furnish the descriptive and complex idea of the vocation of the institute.

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1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 288–295; G. ACCORNERO, "Le tappe della formazione: Cap. III° della 'Potissimum Institutioni,'" in M.J. ARROBA CONDE (dir.), *La formación de los religiosos. Comentario a la Instrucción "Potissimum Institutioni"* (Rome 1991), pp. 253–276; J.M. ALDAY, "Noviciado," in A. APARICIO-J.M. CANALS (dirs.), *Diccionario teológico de la vida religiosa* (Madrid 1989), pp. 1155–1169; *La preparazione al noviziato. Atti, VII° Convegno—Ufficio formazione CISM (Collevalenza 20–25.IX.1989)* (Rome 1990), p. 233.

b) *Experiencing the life of the institute*: this objective, like the preceding one, considers the novice. Understanding must culminate in experience. This experience is, in itself, a magnificent method of understanding: the best, in our case, and the obligatory method because possession of the history and theory of the institute would be insufficient. The active deponent verb utilized in the canon (*experiantur*) implies a protagonistic dynamism of making an experience one's own, of assimilating something by practicing it. This one constitutive objective of the novitiate polarizes around itself an entire constellation of norms, like those contained in cc. 651 §§ 2 and 3, 652 § 4, 647 § 3, 648, etc.

c) *Conforming the heart and the mind to match the spirit of the institute.* This process of conforming should be understood in the sense of taking the form of, adjusting to, agreeing with, by sculpting objective forms in the mind and heart.

The dynamic verb (*informare*) immediately emphasizes the action of the novice, personally obligated to *conform himself*, but without forgetting the supplementary action of the institute, which has to procure for him those spiritual, historical, patrimonial, and vital *forms* inspired in its spirit and lived by its members.

In the mind and heart means the totality of the person, according to his cognitive, emotional, mental, social, and theoretical dimensions, and according to his interior and operative experience.

This objective polarizes a new constellation of norms contained in cc. 573 § 1, 577, 605, 574 § 2, 576, 578, 652 § 2, which demonstrates the ability of the legislator to establish it in the constitutive axis of the novitiate.

d) *Testing the intention and suitability of the novice*: this is an extremely direct and grave responsibility of the institute, through its superiors and educators. Indirectly, it is the fundamental duty of the novice, for, if he does not give signs in this regard, he will fail in his attempt and will not be able to be admitted to profession.

The rationale is powerful: to admit the best members right from the beginning of religious life which in turn: *a*) is a problem of survival, continuity, development, and identity of the institute; *b*) is an intrinsic requirement of this extremely special belonging to the Church and its mystery; and *c*) it is a public ecclesial responsibility, which in no case may be disregarded.

It must be noted that the legislator, in alluding to *testing*, employs a weighty juridical term, which implies approval of the matter in all its parts, confirmatory recognition of something until reaching its resolution.

The *intention*, not to be confused here with the reference for the order of virgins (cf. c. 604 § 1), has the vocational significance of a vital plan, a fundamental choice under grace. The intention of professing for

the first time is not enough; it has to assume all the reality of consecrated life in the institute, until death, by following the steps and stages established by the law of the Church.

The suitability, in contrast, as a group of talents required by the law, must be present, not future or uncertain, immediately projectable over the first profession, but not with fewer demands or less clarity, foreseeably existent and lasting for a lifetime.

647 § 1. **Domus novitiatus erectio, translatio et suppressio fiant per decretum scripto datum supremi Moderatoris instituti de consensu sui consilii.**

§ 2. **Novitiatus, ut validus sit, peragi debet in domo ad hoc rite designata. In casibus particularibus et ad modum exceptionis, ex concessione Moderatoris supremi de consensu sui consilii, candidatus novitiatum peragere potest in alia instituti domo, sub moderamine alicuius probati religiosi, qui vices magistri novitiorum gerat.**

§ 3. **Superior maior permittere potest ut novitiorum coetus, per certa temporis spatia, in alia instituti domo, a se designata, commoretur.**

§ 1. The establishment, transfer and suppression of a novitiate house are to take place by a written decree of the Supreme Moderator of the institute, given with the consent of his or her council.

§ 2. To be valid, a novitiate must take place in a house which is duly designated for this purpose. In particular cases and by way of exception, and with the permission of the Supreme Moderator, given with the consent of his or her council, a candidate can make the novitiate in another house of the institute, under the direction of an approved religious who takes the place of the director of novices.

§ 3. A major Superior can allow the group of novices to reside, for a certain period of time, in another specified house of the institute.

SOURCES: § 1: *CAd* 18; SCRSI Decr. *Religionum laicalium*, 31 maii 1966, 7 (*AAS* 59 [1967] 363); *RC* 16: I
§ 2: c. 555 § 1,3°; *RC* 15, 16: I; 19
§ 3: c. 556 § 4; *RC* 16: II

CROSS REFERENCES: § 1: cc. 10, 48–58, 127, 607 §§ 2–3, 609–612, 616, 622, 625 § 1, 627
§ 2: cc. 127, 622, 625 § 1, 627, 641–646, 650–651
§ 3: cc. 608–612, 620, 648 § 1

COMMENTARY

Domingo J. Andrés, cmf.

The norm states the internal competent authority to establish and maintain or suppress a novitiate house and determines, under penalty of

nullity, that the novitiate must be made in said house, save the two expressly and specifically permitted exceptions.[1]

1. The overall rationale for the canon, apparently rigid, is easily perceived, due to the imperative need for unity and the concentration of formation in this extremely delicate stage. The two exceptions at the beginning of the local realization of the novitiate are explained in consideration of certain vocations and characters, that can be assimilated to the same religious values without having to live in the novitiate house with the group of novices; specifically, the second exception has at its core to facilitate a better understanding and experience of the life of the institute by contact with other communities of the same institute.

2. *Establishment, transfer, and suppression* (§ 1). These are the most important possible acts; under them, the modifications that are not interchangeable with one of the three can depend on the inferior superiors to the general superior, pursuant to the proper law.

Regarding the form required to realize said acts, there must be a decree recorded in writing, though not *ad validitatem* (cf. cc. 48 and 10). The requirement of this written form reinforces the gravity of the act. The essential content of the decree can be summarized as follows: *a*) competent authority; *b*) cause and conditions that must be verified; *c*) the relative act with allusion to the possible effects; *d*) the transient nature or indefiniteness of the act; and *e*) the location and date of the same.

3. *The site of the novitiate* (§ 2). The novitiate must be made in one of the houses or in the only house lawfully intended for that purpose, under penalty of invalidity of the novitiate. This implies the demand for a continuing manner and style of life, coherent and uniform in the same house. It might be said that the norm is supported by good pedagogical reasoning.

The *designation of the house* for the novitiate can be effected in the following manner: *a*) by the same establishing authority, pursuant to § 1; or *b*) through another authority that, by invoking one or both exceptions to the principle, designates another house.

This is not a mere site or place, but a true religious house, capable of being established pursuant to § 1 of the present canon. Of course, it must be a house of the same institute, whose members will fulfill, as a minimum, the requirements of c. 652 § 4.

4. First exception: *a complete novitiate outside the novitiate house* (§ 2). Given the appropriate occasion, the canon formulates the first exception to the site of novitiate, which can refer to one or several novices in particular who can make the entire novitiate in another house of the in-

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 295–303.

stitute different from the house that has been specifically designated for the novitiate.

The *five conditions* which allow one to invoke this possibility are the following: *a*) that it is a matter of individual cases which, for their exceptional character, should not be many or more than the general cases; *b*) that it always be an exception to the rule, though the cases may be many, and be considered as such by everyone; *c*) that it be granted by the general superior and never be valid without the consent of his council; *d*) that he who has obtained the exception make the novitiate in another house of the institute, not outside the institute; and *e*) that he brings it about under the direction of an experienced religious who will act as a substitute for the novice master for him; obviously, this religious—although the norm does not specify it—must be a professed member of the institute.

5. Second exception: *periods of religious life outside the novitiate house* (§ 3). This is the second exception to the rule of place, which in contrast to the previous rule: *a*) can only be permitted to the novices as a group, as a body in its totality, not to one or several isolated from the entire group; *b*) is granted by the major superior without the necessity of consulting with his council, unless specified by the proper law.

The duration is expressed generically in the phrase "*per certa temporis spatia*": an expression capable of two interpretations, both acceptable: *a*) "certain" meaning some, several; *b*) "determined" meaning defined, pre-established with certainty, which will consist precisely in the determined duration previously fixed by the major superior who grants the permission.

That the house has to be of the same institute is common sense if the rationale for the faculty is kept in mind, which is to facilitate understanding and experience of the life of the institute.

Correlative to the several periods of time, the eligible houses can be different.

Because it is inappropriate, and for other solid reasons the very document adduces, *Potissimum institutioni* 50 and 28 are decidedly opposed these periods of time—*a fortiori* in the case of an entire novitiate—being carried out in communities denominated "inserted" or "of insertion."

648 **§ 1. Novitiatus, ut validus sit, duodecim menses in ipsa novitiatus communitate peragendos complecti debet, firmo praescripto can. 647 § 3.**

§ 2. Ad novitiorum institutionem perficiendam, constitutiones, praeter tempus de quo in § 1, unum vel plura exercitationis apostolicae tempora extra novitiatus communitatem peragenda statuere possunt.

§ 3. Novitiatus ultra biennium ne extendatur.

§ 1. For validity, the novitiate must comprise twelve months spent in the novitiate community, without prejudice to the provision of can. 647 § 3.

§ 2. To complete the formation of the novices, the constitutions can prescribe, in addition to the time mentioned in § 1, one or more periods of apostolic activity, to be performed outside the novitiate community.

§ 3. The novitiate is not to extend beyond two years.

SOURCES: § 1: c. 555 § 1,2°; *RC* 15: II; 21
§ 2: *RC* 23: I; 24: I–II; 25: I; 31: I–II
§ 3: *RC* 24: I

CROSS REFERENCES: § 1: 200–203, 646, 647 §§ 1–2
§ 2: cc. 687 §§ 1–3
§ 3: cc. 200–203, 646, 653 § 2

COMMENTARY

Domingo J. Andrés, cmf.

The norm is centered on the duration of the novitiate, on the specific fixing of a minimum of twelve months and a maximum of two years, granting to the constitutions the possibility of introducing an "apostolic activity" (see below, no. 3), the duration of which may not exceed the twelve months.[1]

1. The rationale for this temporal delimitation is, in part, analogous to the delimitation that forms the basis of the determination of the site of the novitiate (cf. c. 647), and in part it is different. As the fruit of experience backed by modern religious pedagogy and psychology, the legislator

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 303–313.

presumes that the constitutive objectives of the novitiate are unreachable in a period of less than a year's duration; while more than two years lacks sense, since it is possibly prejudicial or, at least, useless, to keep in the particular environment of the novitiate those who have already assimilated its ends or those who have demonstrated the contrary.

2. *The minimum of twelve months* (§ 1). For the validity of the novitiate, the following are required: *a*) twelve months in duration; *b*) in the same community of the novitiate; and *c*) included in the counting of these periods, the periods that the group of novices might spend in a house, different from the novitiate house pursuant to c. 647 § 3.

The twelve months can be *continuous or discontinuous*, as demonstrated here: *a*) the periods of activity permitted by § 2 that, although they might not constitute for these purposes twelve months, can be inserted into that period; *b*) the allowance of lawful absences, which do not affect an interruption (cf. c. 649 § 1.) They must be, moreover, *complete*. They are computed pursuant to cc. 200–203.

Without prejudice to c. 647 § 3 means that, despite the general principle that the novice must spend twelve months in the same novitiate community, the group or community of novices can live in another house for some periods and, thus, in a different community.

Nevertheless, there are other norms that must be left undisturbed in the nature of exceptions to the principle established in the first paragraph of the canon, specifically the contents of cc. 647 § 2, 648 § 2, 649 §§ 1 and 2. This affects with such force and from so many angles the apparent specificity of the initial normative principle, that it makes of this new novitiate, both on the question of duration and of place, an institute quite different in respect to the one established by the *CIC*/1917.

3. *Apostolic activity or activities* (§ 2): in conformance with its documentary sources and with the spirit and intention flowing therefrom, this can be defined as the group of actions of the apostolate, consonant with the nature and mission of the institute, which the novices, under the direction of the director of novices, put into practice during the novitiate, but outside that community, to perfect their formation.

It is a faculty related to that granted by c. 647 § 3, but genuinely different in reference to those for whom it is intended, which determines the location where it may occur, the duration of the novitiate, and, finally, the organ of governance that can grant it.

Although there are denominated *apostolic* activities, their end is not the apostolate, but the perfection of formation. This activity is an instrument of formation; the apostolate, a fundamental subject among other possible subjects; its end, formation. This cannot be doubted, as much as its practice might tend to distort the meaning of the activities; perhaps

they could be done more measuredly or with more balance, if its strictly formative end were kept in mind.

Because of its importance and gravity, the faculty of prescribing said activities for novices has been entrusted to the constitutions, as the principal code of the institutes, leaving the consequences for transgression of the norm to be introduced in other ways (cf. also *PI* 48).

4. *Maximum of two years for the novitiate* (§ 3). It is prohibited by § 3 to extend the duration of the novitiate beyond two years, without prejudice to the possible extension envisioned by c. 653 § 2.

Likewise, the same norm fixes the maximum limit that can be granted for the duration of apostolic performances: exactly twelve months, which is the period that remains between the maximum duration of two years and the minimum of one year prescribed in § 1.

The limit of two years *is not a norm of validity,* such that if it were exceeded, the novitiate would be invalid. Neither the sources nor the text of the canon declares it; for which, pursuant to c. 10, it is a sensible lawful norm, which if exceeded or extended, unless it is approved in the constitutions of an institute and without prejudice to the extension contained in c. 653 § 2, the permission of the Holy See is necessary.

649 **§ 1. Salvis praescriptis can. 647 § 3 et can. 648 § 2, absentia a domo novitiatus quae tres menses, sive continuos sive intermissos, superet, novitiatum invalidum reddit. Absentia quae quindecim dies superet, suppleri debet.**

§ 2. De venia competentis Superioris maioris, prima professio anticipari potest, non ultra quindecim dies.

§ 1. Without prejudice to the provision of cann. 647 § 3 and 648 § 2, a novitiate is invalidated by an absence from the novitiate house of more than three months, continuous or broken. Any absence of more than fifteen days must be made good.

§ 2. With the permission of the competent major Superior, first profession may be anticipated, though not by more than fifteen days.

SOURCES: § 1: c. 556 §§ 1 et 2; *RC* 22: I–II
§ 2: cc. 555 § 1,2°, 572 § 1,3°; *RC* 26

CROSS REFERENCES: § 1: cc. 200–203, 647 § 3, 648 § 2
§ 2: cc. 620, 655–656

COMMENTARY

Domingo J. Andrés, cmf.

The norm establishes the following: *a*) an absence that invalidates the novitiate; *b*) another absence that must be made good, without invalidating the novitiate; *c*) a third absence that, by universal law, is not required to be made good; and *d*) a possible anticipation of the first profession. In this form, while maintaining the substantive and moral integrity of the duration of the novitiate, the norm comes to mitigate, with notable breadth of criterion, the rigid discipline that the *CIC*/1917 contained in this regard.[1]

1. The rationale for this flexible norm is multiple and diversified, if one considers the elements of the group: *a*) the provisos with which it opens, with contextual exigencies of great juridical clarity and certainty; *b*) the extension—in relation to the *CIC*/1917—of the limit of invalidity of one month to three, owing to comprehensible reasons of suitability to the

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 313–319.

new circumstances of religious life, more or less positive, but real and universal; *c*) the required making good of every absence exceeding more than fifteen days, up to three months, is based in that, from here, one arrives at percentages that affect the substantive and moral integrity of the novitiate; and *d*) the lack of the necessity to make good fifteen or fewer days of absence, due to that, for being such a small number, the whole of the novitiate is not deprived of its necessary moral integrity; and finally,

e) the possible anticipation of first profession for no more than another fifteen days, based on the realistic consideration of circumstances of family, community, ministry, liturgy, psychology, etc., frequently attached to the making of first profession.

2. *An absence of more than one trimester invalidates the novitiate* (§ 1). This refers to a real separation—not mental or spiritual—temporary, with or without cause, with or without permission, *from the novitiate house*, such that he who is absent in this way undoes all the formative structure.

It must be an absence *from the house* and not only from the community, from which one could separate one's self even while being or continuing in the house. The norm does not affect this second type of absence.

It makes the novitiate invalid: this is a clause that retroactively affects every period of time which has transpired in the novitiate, making it inoperative for canonical purposes and incapacitating the novice for subsequent acts.

The two provisos contained in cc. 647 § 3 and 648 § 2 referred to in the norm are prudently required: they are absences that are not computable for purposes of invalidity.

3. *Any absence of more than fifteen days must be made good* (§ 1). The norm of § 2 revolves around three cases, to which are reserved different treatments: *a*) implicitly, one absence of exactly three months, continuous or discontinuous, does not invalidate the novitiate by implicit provision of the norm; *b*) explicitly, another that, by exceeding fifteen days, but without exceeding three months, does not *a fortiori* invalidate it, likewise, like the first, it must be made good; and *c*) a third type of absence that, being of fifteen or fewer days, consecutive or not, neither invalidates the novitiate nor needs to be made good; in this last case lies the difference from the first two.

4. *Anticipation of first profession* (§ 2). The competent major superior is authorized to permit an anticipation of first profession of not more than fifteen days. Therefore, the director of novices, the local superiors—including the superiors of the novitiate house—and the major superiors not of the novices are incompetent to authorize this anticipation.

The major superior does not need the vote of his council, and there exists no sufficient reason for the law to impose it.

The proper law may not make use of this faculty, that is, it can choose not to put it in the constitutions or directories, but if it does contemplate it, it must not distort the nature of the faculty by obligating the superior to put it into practice.

A novice, several, or all the group or community of novices are the beneficiaries—supposing age, the requirements for profession, and a minimum just cause permitted by the competent superior.

650 **§ 1. Scopus novitiatus exigit ut novitii sub directione magistri efformentur iuxta rationem institutionis iure proprio definiendam.**

§ 2. Regimen novitiorum, sub auctoritate Superiorum maiorum, uni magistro reservatur.

§ 1. The object of the novitiate demands that novices be formed under the supervision of the director of novices, according to a programme formation to be defined by the institute's own law.

§ 2. The governance of the novices is reserved to the director of novices alone, under the authority of the major Superiors.

SOURCES: § 1: cc. 559 § 1, 561 § 1, 565 § 1; *RC* 30, 31: I
§ 2: c. 561 §§ 1 et 2; *RC* 30

CROSS REFERENCES: § 1: cc. 587, 646, 652 § 3, 659 § 2
§ 2: cc. 617–618, 620, 651, 985

COMMENTARY

Domingo J. Andrés, cmf.

It is established that the proper law will make a formation plan for the novices, inspired by the nuclear objective of the novitiate, in which will predominate the principle that the formative regimen depends only on the figure of the director of novices, under the authority of the major superiors.[1]

1. The canon responds to the two coordinated complementary norms that justify it: *a*) the need to grant a better letter of credit and more universal consistency to the formative programs proper to each institute; and *b*) the necessity of fixing with greater clarity the outline of the role of the crucial figure of the director of novices, which is necessitated by some ambiguous and inefficacious experiences.

2. *The plan of formation and the director of novices* (§ 1). Pursuant to the text of the norm, and keeping in mind the ends of the novitiate (cf. c. 646), a formation plan is necessary. Likewise, the structural content of said plan must demonstrate that the constitutive ends of the novitiate truly are those that give rise to suitable structures for attaining such ends.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 319–324.

The direction of the director of novices implies the following: *a*) a personal office aimed at direction; *b*) a responsibility of office that allows him to settle everything related to his task; *c*) a coordination of possible efforts; *d*) a construction of the lines of power that leads everyone toward a single objective; and *e*) a support and subordination by the novices of such a nature that does not exclude their creativity and the dynamic and assimilating collaboration of which c. 652 § 3 will speak.

The dual meaning of the Latin term that is employed (*efformentur*) is significant, translatable as *be formed* (passive), which respects the direction of the director; or as *they form themselves* (deponent), which conserves the convergent auto-formative prominence of the novice himself.

The *formation plan* must have technical features necessary to be able to be considered serious and exactly as such: suitable content, clarity, organicity, successive logic, stability, approval, application to all the novices of an institute, while respecting and creating due provisions for autonomy for the provinces, regions, nations, etc., in which an institute might have a novitiate.

3. *The governance of novices and the director of novices* (§ 2). An original and important task is established, reserving to the director of novices governance of the novices under the authority of the major superiors (supreme moderator and provincial superior), with the notable omission of the local superior of the novitiate house. This needs careful explanation.

Governance, here, is power in the broad sense—with the exclusion of the internal sacramental forum (cf. c. 985)—of governing the novices according to the objectives of their condition as novices and within the limits of the office of director, different from that of the local superior. But the local superior, if he is the superior of the novitiate house, will govern the house not because of the novitiate but because it is a house.

The *consequences* that follow do not lack importance and, sometimes, difficulty: *a*) said power does not make the director of novices into a local superior, even of the novices; *b*) since it reserves power, this conferring of governance on the director directly affects the local superior, from whom it is taken; *c*) therefore, the novices are subjects of the superior, only to the extent they are not under his governance as novices; *d*) thus, since they are novices, they depend on the director of novices, under the authority of the major superior and not the local superior; but as members of the novitiate house they depend, like their director, on the superior of the house.

The difficulties of this singular situation can occur in organic relation between the director of novices and the local superior. This explains the tendency to resolve every difficulty at its root, although it is far from possible and viable in every case, by converting the director of novices into a local superior, or the local superior into a director of novices.

651 **§ 1. Novitiorum magister sit sodalis instituti qui vota perpetua professus sit et legitime designatus.**

§ 2. Magistro, si opus fuerit, cooperatores dari possunt, qui ei subsint quoad moderamen novitiatus et institutionis rationem.

§ 3. Novitiorum institutioni praeficiantur sodales sedulo praeparati qui, aliis oneribus non impediti, munus suum fructuose et stabili modo absolvere possint.

§ 1. The director of novices is to be a member of the institute who has taken perpetual vows and has been lawfully designated.

§ 2. If need be, directors of novices may be given assistants, who are subject to them in regard to the governance of the novitiate and the programme of formation.

§ 3. Those in charge of the formation of novices are to be members who have been carefully prepared, and who are not burdened with other tasks, so that they may discharge their office fruitfully and in a stable fashion.

SOURCES: § 1: cc. 559 § 1, 560; *AIE* 3°
§ 2: c. 559 § 2; *RC* 30
§ 3: cc. 554 § 3, 559 § 3; *SS* III; *SCong* 24; 25 § 4; 26 § 2; 28,7°; SCR Instr. *Religiosorum institutio*, 2 feb. 1961, 33, 2; *PC* 18d; *OT* 5; *RFIS* 30, 31, 37

CROSS REFERENCES: § 1:cc. 650, 658
§ 2: cc. 646, 650 § 1
§ 3: c. 660 § 2

COMMENTARY

Domingo J. Andrés, cmf.

The norm imposes the minimum essential requirement that the director of novices and his possible assistants must have guaranteed freedom from other duties so they can concentrate on their offices.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 324–330; idem, "De non incompatibilitate officiorum superioris localis-maioris et magistri novitiorum," in *Commentarium pro Religiosis et Missionariis* 67 (1986), pp. 167–172; SCRSI, "Noviziati intercongregazionali?" in *Informationes* SCRSI 24 (1975), pp. 153–156.

1. At the core of these prescriptions and guarantees, as the *foundation of the norm*, is the conviction of the legislator: *a*) of the radical importance of the figure of the director of novices; *b*) of the importance of the time of the novitiate; and *c*) of the necessary unity, constancy, and intensity that must take place in the formation of the novices.

2. *Basic requirements for the director of novices* (§ 1):

a) *To be a member of the institute:* a requirement solidly justified by many contextual reasons intrinsic to the figure and the functions of the director of novices, which are deduced especially from cc. 646 and 652 §§ 1–2. This precept is grave, although with regards to its lawfulness, it is dispensable by the Holy See, but without causing detriment to the institute or to the novice.

This quality explains, by itself, part of the Church's reticence to have inter-congregational formation indiscriminately invade the novitiates. This is detectable in *Potissimum institutione* 100, which limits this to sporadic and transitory forms of service.

b) *To have taken perpetual vows*, for exigencies substantially equal to those of the prior requirement, but taken to a greater degree of intensity and of exigency. This precept is also grave and only dispensable by the Holy See on conditions equal to those previously expressed.

c) *To be lawfully appointed*, pursuant to the universal law and, especially, the proper law, which autonomously must state the manner and specific qualities that the candidate for director must have.

3. *Assistants or aides to the director of novices* (§ 2). In substantial fidelity with the tradition of religious life, and as an admission of the exigencies and orientations of present religious psychology and pedagogy, the faculty of giving the director assistants for the work of the novitiate is granted, if necessary.

There can be one or several assistants. The kinds of needs can vary, according to the case: *a*) number of novices; *b*) distinct canonical classes of novices; *c*) heterogeneity of ages, culture, origin, and language; and *d*) health, age, or personal limitations of the director.

Their designation can be made by the same superior who designated the director, who, in all cases should be consulted, or by another competent superior.

All of them are directly subordinate to the director, for reasons of unity of direction and concentration of ultimate responsibility in one figure alone. But the director is not a superior of the assistants, if superior is understood in the strict sense.

4. *Other general requirements for the director of novices and assistants* (§ 3). Referring to the director and his aides, and to all those who can perform other responsibilities in the work of formation of the novices, the

legislator provides that: *a*) they must have careful preparation; *b*) they must be free from commitments and duties that could hinder their work; and *c*) they must devote themselves to their office with stability and efficacy.

Obviously, these requirements must be interpreted regarding the degree and intensity of their possession, directly in proportion to the job they have, it being maximally demanded of the director.

652 **§ 1. Magistri eiusque cooperatorum est novitiorum vocationem discernere et comprobare, eosque gradatim ad vitam perfectionis instituti propriam rite ducendam efformare.**

§ 2. Novitii ad virtutes humanas et christianas excolendas adducantur; per orationem et sui abnegationem in pleniorem perfectionis viam introducantur; ad mysterium salutis contemplandum et sacras Scripturas legendas et meditandas instruantur; ad Dei cultum in sacra liturgia excolendum praeparentur; rationem addiscant vitam ducendi Deo hominibusque in Christo per consilia evangelica consecratam; de instituti indole et spiritu, fine et disciplina, historia et vita edoceantur atque amore erga Ecclesiam eiusque sacros Pastores imbuantur.

§ 3. Novitii, propriae responsabilitatis conscii, ita cum magistro suo active collaborent ut gratiae divinae vocationis fideliter respondeant.

§ 4. Curent instituti sodales, ut in opere institutionis novitiorum pro parte sua cooperentur vitae exemplo et oratione.

§ 5. Tempus novitiatus, de quo in can. 648 § 1, in opus formationis proprie impendatur, ideoque novitii ne occupentur in studiis et muniis, quae huic formationi non directe inserviunt.

§ 1. It is the responsibility of the directors of novices and their assistants to discern and test the vocation of the novices, and gradually to form them to lead the life of perfection which is proper to the institute.

§ 2. Novices are to be led to develop human and christian virtues. Through prayer and self-denial they are to be introduced to a fuller way of perfection. They are to be instructed in contemplating the mystery of salvation, and in reading and meditating on the sacred Scriptures. Their preparation is to enable them to develop their worship of God in the sacred liturgy. They are to learn how to lead a life consecrated to God and their neighbour in Christ through the evangelical counsels. They are to learn about the character and spirit of the institute, its purpose and discipline, its history and life, and be imbued with a love for the Church and its sacred Pastors.

§ 3. Novices, conscious of their own responsibility, are to cooperate actively with the director of novices, so that they may faithfully respond to the grace of their divine vocation.

§ 4. By the example of their lives and by prayer, the members of the institute are to ensure that they do their part in assisting the work of formation of the novices.

§ 5. The period of novitiate mentioned in can. 648 § 1, is to be set aside exclusively for the work of formation. The novices are therefore not to be engaged in studies or duties which do not directly serve this formation.

SOURCES: § 1: cc. 562, 565 § 1; *RC* 13, 15: II–III; *RFIS* 40; *LMR* II: 11
§ 2: cc. 561 § 1, 562, 565 § 1; SCR Instr. *Plures exstant*, 3 nov. 1921, I (*AAS* 13 [1921] 539); *SS* III; *PC* 6; *OT* 8–11; *RC* 15: II–IV; 31: II; *RFIS* 48–55; *SFS*
§ 3: SCR Instr. *Religiosorum institutio*, 2 feb. 1961, 20; *RC* 32: I–II; *RFIS* 39, 40
§ 4: c. 544 § 3; *PC* 24; *OT* 2; *RC* 5, 35e; *MR* 18
§ 5: c. 565 § 3; SCR Instr. *Plures extant*, 3 nov. 1921, II (*AAS* 13 [1921] 539); *SCong* 36 § 1,2°; *RC* 29, 30

CROSS REFERENCES: § 1: cc. 207 § 2, 207 § 2, 574 § 1, 598 § 2, 602, 646, 650–652, 665 § 2, 666, 670, 573 § 1, 676, 710, 719 § 1, 722 § 1, 725, 731 § 1, 737
§ 2: cc. 212 § 2, 217, 245, 246 § 3, 252, 253, 275 § 1, 276, 279, 378 § 1, 1°, 521 § 2, 573–578, 587, 607, 610 § 1, 619, 652 § 4, 654, 659 § 3, 663, 673, 678, 705, 788 § 2, 1029, 1173, 1191 § 1
§ 3: cc. 650–652
§ 4: cc. 602, 607, 619, 663–664, 673
§ 5: cc. 234, 648 § 1, 659 § 3

COMMENTARY

Domingo J. Andrés, cmf.

Around the central axis constituted by the formation of the novice converge three intersecting circles: active protagonists and objectives; vital content or subjects, reinforced by the precept of temporary concentration and non-dispersion of effort and, co-protagonists, located in the novices and in the other members of the institute.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 331–341; G. ACCORNERO, "Le tappe della formazione," in *La formación de los religiosos. Comentario a la Instrucción "Potissimum Institutioni"* (Rome 1991), pp. 26–266; M.J. ARROBA CONDE, "Agentes y ámbito de la formación," ibid., pp. 221–252.

Each circle not only must revolve around the central axis—formation—but also around the other circles, so that every dysfunction will be felt in the system of which it forms a part, disrupting the great harmony and cohesion that attends this canon, one of the longest in the Code.

1. Its *justification* lays in the absolute necessity of organically and clearly grouping together the principal considerations and elements that the legislator considers necessary for the formation of novices.

Said necessity, in turn, is reinforced by considering the instability, the excessive and risky variety, the frequent tendency to dispersion or, even, the superficiality that, at times, has accompanied certain experiences in this regard.

2. *Primary protagonists and objectives* (§ 1):

a) *The primary protagonists* are the director of novices and his aides, who have the duty and right to execute the statute of formation, according to the technically suitable formulation of the norm: each one in conformity with his own duty and function. *Regarding their duty*, they bring it to fulfillment for the Church and for the institute that has designated them to achieve the objectives of this stage.

b) As *the primary objectives*, these are discernment and testing of the vocation, to which—understood according to c. 646—the novice must respond with fidelity to the institute, for he has a vocation to this institute and not to any other (cf. § 3). The life of perfection of the institute is likewise mentioned, into which the novices have to be appropriately (*rite*) incorporated, but gradually (*gradatim*), in fulfillment of the global nature of the proper law of the institute. Thus, the novice is initially immersed in the dynamic of perfection, the task of his entire life within an institute that belongs to the life and sanctity of the Church (cf. cc. 207 § 2, 574 § 1).

3. *Contents of the formation plan* (§ 2). Seven subjects are referred to, in the form of precepts, clear and without qualifications, which the formation plan must contain, creating an exquisitely religious atmosphere and forming a group of extraordinary harmony with the rest of the treatment of religious life, in whose chapter regarding rights and duties they find a remarkable echo:

a) *cultivation of the virtues*, not as theory and investigation, but as daily work and practice; tradition has constantly required this of those who have prepared themselves for the profession of the evangelical counsels;

b) *prayer and self-denial*, as an ascetic that is not nourished exclusively by manuals, but by continuous and persistent works. These are the same as the prayer and penance spoken of by cc. 673, 663 § 1, 619, and 652 § 4;

c) *the Mystery of salvation and sacred Scripture*, in which they must administer instruction to themselves and receive it from others,

forming a unity in which the novice is to be dedicated to reading, study, and meditation. This precept harmonizes with the parallel obligation of the professed member that the novice will someday become (cf. c. 663 § 3) and with the future enjoyment of the word of God that the superiors must help bring to their subjects (cf. c. 619);

d) *liturgical worship*, in which they must receive preparation and make the personal effort to prepare themselves so as to, someday, be able to instruct others and with them to celebrate the Liturgy of the Church. Along these same lines they will, someday, as professed members have as an obligation important practices in this regard (cf. c. 663 §§ 2–4). Their own superiors are the most suitable persons to lead them in these matters (cf. c. 619);

e) *religious consecrated life*, which, in essence, amounts to what the *CIC*/1917 described as a scrupulous exercise of religious discipline and the vows of this state. Among related matters are the theology, and spirituality of religious life, and the universal canon law regarding religious, as can be deduced from cc. 607–709;

f) *spirit, discipline, and life of the institute*, as a type of the previous content. By its position in the system, this phrase makes all the previous sections converge in these three elements. The expression *patrimony* could have been utilized (cf. c. 578), which would have encompassed both the nature and the spirit of the institute. In turn, the end and discipline could have been summed up in the expression of the proper law, in which there also would have been present its tradition (cf. c. 578), namely the sum of the history and the life of the institute.

g) *love for the Church and its sacred pastors*, with which they must imbue themselves and be imbued with, because to love the Church and its hierarchy is to love the very life and sanctity pertaining to those of that Church, moderated by the sacred pastors (cf. cc. 207 § 2 and 574 § 1). This love, in its practical operative dimension, finds coherence and echo in cc. 678, 680, and 592 § 2, among others. The novice must begin to travel this road of cordial insertion into the Church with enthusiasm and exigency.[2]

4. *The active and responsible cooperation of the novice* (§ 3). This norm, with notable ability and concision, forms a co-protagonism with the novice, the passive subject of formation, which converts him into the person directly responsible for his personal integration. To actively cooperate with the director implies submission, openness, permeability, creativity, initiative, integrating ideas; propulsion, incentives, exigencies.[3]

2. Cf. *PI* 46–48 for a longer and more exact discussion in favor of this same set of values.
3. Cf. *PI* 29 and 53, which expound on and give the reasons for the responsibility that one must have for one's own formation.

5. *The assistance of all members with the example of their lives* (§ 4). This norm desires to involve the entire institute in the formative task, but with a clear distinction of functions. It is a matter of the example of their lives and praying, and neither the director nor his aides, nor the superiors are excluded because the norm is looking to the quality of the member of the same family and not at the distinct functions that can be performed within the family.

6. *Prohibited studies and occupations* (§ 5). The extremely compressed plan of § 2, together with the structural and constitutive objectives of the novitiate, justify this norm, which states that the twelve months cannot be done without a formation that everything should be centered around, including the time factor; likewise, studies, offices, or occupations that do not directly further this formation should not be allowed.

In this respect, a new element can be found in *Potissimum institutione* 48, when, *in fine*, it specifies that a professional work realized full-time during the novitiate is only imaginable and possible if it is genuinely coherent with the apostolic end of the institute, if its is carried out during the second year of the novitiate, and if the prescription of c. 648 § 2 is observed, namely, if it aids formation.

653 **§ 1. Novitius institutum libere deserere potest; competens autem instituti auctoritas potest eum dimittere.**

§ 2. Exacto novitiatu, si idoneus iudicetur, novitius ad professionem temporariam admittatur, secus dimittatur; si dubium supersit de eius idoneitate, potest probationis tempus a Superiore maiore ad normam iuris proprii, non tamen ultra sex menses prorogari.

§ 1. A novice may freely leave the institute. The competent authority of the institute may also dismiss a novice.

§ 2. On the completion of the novitiate, a novice, if judged suitable, is to be admitted to temporary profession; otherwise the novice is to be dismissed. If a doubt exists concerning suitability, the time of probation may be prolonged by the Major Superior, in accordance with the institute's own law, but for a period not exceeding six months.

SOURCES: § 1: c. 571 § 1
§ 2: c. 571 § 2; SCR Decl., 30 dec. 1922 (*AAS* 15 [1923] 156–158)

CROSS REFERENCES: § 1: cc. 607 §§ 2–3, 641, 688, 694–700
§ 2: cc. 200–203, 587, 620, 646–652, 655–656

COMMENTARY

Domingo J. Andrés, cmf.

The norm establishes five possible conclusions for the novitiate besides an extension. The internal structure of the norm consists in putting the free methods before the conditioned ones. In no way does it coincide with the order of preference desired, which would be admission to profession, extension, leaving and dismissal. The placement is perfect.[1]

Seen in its entirety, the norm finds its rationale in the necessity that the saw, supported by the societal and public character of the institute, foresees and rationalizes with exactitude the forms of incorporation into and separation from the institute, without leaving anything to the discretion of the interested parties, with the risk of disagreement, arbitrariness, and injustice.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 342–349.

In particular, each method has its own justification.

2. *Free to leave, during or at the conclusion of the novitiate* (§ 1). Both methods are derived from the freedom of the novice, here protected by the norm by depriving the institute from having any law or recourse to retention. The legislator permits as just all the causes cited by the novice to abandon the novitiate, with the only condition that they be voluntary and free.

Morally and in the forum of conscience, there may not be any objectively valid cause; although if it is so, the institute could not deprive the novice of the juridical freedom to leave.

3. *Dismissal during the novitiate* (§ 1). This is also derived from the freedom of the novice, although motivated by the will of the institute. Here, the freedom of the institute is protected, but in contrast to the case of freely leaving the novitiate: *a*) the freedom of the institute is relative to and conditioned on the existence of causes, at least, in proportion to the gravity of a positive dismissal; *b*) the institute cannot invoke in its favor any forum of conscience, which it does not have as a society, as the novice could do; therefore, the law cannot bestow on it arbitrary, threatening, unjust or imprudent procedures.

It must be said that in no way is this expulsion, like that which is applicable to professed (cf. cc. 694–704), but a case of non-admission: *a*) immediately, to the continuation of the novitiate; *b*) mediately, to the profession for which the novitiate objectively and constitutively aims. It is an ending of the stage of verification of the objectives of the novitiate for which no process is needed.

The causes adduced by the institute, which have to be just and proportional, can arise on the part of the novice (illness, lack of spirit, bad habits, etc.), or on the part of the institute. In both cases, it can be seriously questioned whether the institute is obliged to state them to the interested party. Certainly, with non-admission to the institute, there is no strict violation of the novice's rights, but the reality of some cases may recommend a statement of the causes.

4. *Admission to temporary profession* (§ 2). This is the most ideal and desired method of conclusion, if two conditions are verified: *a*) that the lawful time of novitiate has been duly completed; and *b*) that the suitability required by the law has been confirmed.

That "the novice be admitted" (*admittatur*) is a precept that implies not only that, if he is suitable, he cannot be rejected, but that, if he has finished the novitiate and is found suitable, he must be admitted to profession. The effects of non-admission, in this case, are the following: *a*) that the superior commits a transgression of a universal canon possibly against charity and justice; and *b*) he violates a subjective right, damages the institute and the Church. Thus, it would be possible to utilize a vacating ap-

peal, aimed at admission and compensation for damages caused to the institute and the novice by the superior.

5. *Dismissal at the conclusion of the novitiate* (§ 2). This is the least desirable method of conclusion, but it is possible, if two conditions are verified: *a*) that the time of novitiate has been concluded; and *b*) that the unsuitability of the novice to profess has been verified without doubt. If there is doubt, there may be a place for an extension.

That "the novice be dismissed" (*dimittatur*) is a precept that is followed not only when the novice cannot be admitted to profession, but also when the period of discernment and probation must conclude negatively. The effects are contrasted to the previous effects.

6. *The extension of the novitiate period* (§ 2). This is a special method of not concluding the novitiate which is not always desirable, but is sometimes practical, and may give positive results. The doubt for which the extension can be given must be rational and well-founded, as an effect of sufficient evidence, and serious reasons not existing for dismissal and admission.

The extension is always a faculty in the hands of a major superior, and according to the norms of the proper law, applicable on the initiative of the superior, by the petition of the novice, or by the intervention of third parties. Even after having set the period of extension—always under a semester—the superior can shorten it.

7. *The spiritual exercises before the profession* are no longer obligatory under universalized law. Possibly a prescription in this regard has been thought unnecessary, for it is the universalized practice in the institutes, which prudently prescribe them in the proper law.

ART. 3
De professione religiosa

ART. 3
Religious Profession

654 **Professione religiosa sodales tria consilia evangelica observanda voto publico assumunt, Deo per Ecclesiae ministerium consecrantur et instituto incorporantur cum iuribus et officiis iure definitis.**

By religious profession members make a public vow to observe the three evangelical counsels. Through the ministry of the Church, they are consecrated to God and are incorporated into the institute with the rights and duties defined by law.

SOURCES: cc. 487, 488,1°; *LG* 44, 45; *RC* 7, 34, 36

CROSS REFERENCES: cc. 509–601, 607, 618, 619, 626, 652 § 2, 654, 662–672, 674, 675 § 2, 1025 § 2, 1191ff.

COMMENTARY

Domingo J. Andrés, cmf.

The norm states the three essential components of religious profession, with the rights and obligations flowing therefrom. Technically speaking, it can be considered a little masterpiece, laudable for its concision and also for its canonical and theological exactitude. Perfectly constructed and located, the norm is like the heart of the entire canonical religious organization, which gives life to the other canons in the section.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 350–355; J. OCHOA, "Natura institutionalis Professionis religiosae sub luce Concilii Vaticani II," in D.J. ANDRÉS (dir.), *Quaestiones canonicae de iure religiosorum. Studia in memoriam J. Ochoa Sanz cmf* (Rome 1990), pp. 263–382; S.M. ALONSO, "Consagración," in *Diccionario teológico de la vida religiosa* (Madrid 1989), pp. 368–396.

1. As the *intrinsic ratio*, it obeys the necessity of stating in a brief and concentrated formulation the essence of profession, so that it contains the basis and overview of everything before and after it. With this canon, the legislator makes the prescriptions, requirements or effects of the act of profession.

2. Profession is not defined in the canon ("by religious profession ..."), and is here reduced to a catalogue of its essential components (theological and juridical). By means of the ablative absolute, the canon is broken down into three clauses, with respect to which religious profession can take on a causal efficient meaning, a causal instrumental meaning, and a meaning of chronological or temporal simultaneity.

What this canon establishes must be understood as applying to *valid* profession pursuant to cc. 655–658 and 646–653, because only in that sense are the requirements stated by law satisfied.

3. *Publicly vowed observance of the counsels.* The counsels are like the marrow of profession, whose observance is inseparable from the public vow and, likewise, from the private vow and from other bonds or oaths of the professed religious.

The biblical content of each evangelical counsel is prescribed by cc. 599–601. The doctrine regarding vows and kinds of vows are prescribed by cc. 1191–1198.

4. *Consecration to God through the ministry of the Church.* Consecration in relation to the totality of the profession is a value encompassed in it, with cause of the same. God is the author and point of reference; with his grace one can respond to the gift of divine vocation; it is He to whom the Church consecrates the professing.

The mediating ministry of the Church becomes present and irreplaceable at every moment: in the verification of the suitability and, even before, of the vocation of the aspirant; in the community in which he is professed; in the lawful superior who receives the profession; in the law that prepares and regulates the new way of supernatural life, but also the social and canonical way of life, into which the professed is introduced.

5. *The incorporation into the institute* is the socially and juridically visible sign of consecration, on which it is based and of which it is a manifestation; it is the fundamental aspect implicated in the ecclesial nature of profession. It unfolds in two moments, reciprocally implicated: on the part of the professed, it commences in the *traditio*, with which he is given entirely and immediately to the institute as a visible sign of his consecrated offering to God; on the part of the institute, it culminates in the *acceptatio* of the offering made, through which it adds and incorporates the professed into its heart.

It is not a bilateral contract that would strictly oblige the parties in law or an agreement of the free will of the parties which created the terms

of this agreement. It is, rather, an *institutional* contract (or by institution), because its terms—cause, duration, condition, effects, rights, and obligations—are not stipulated by the professed and the institute, but are imposed on both of them by the public power of the Church.

6. The *rights and obligations* flowing from this institutional contract arise, likewise, pursuant to the universal law of the Church, especially in cc. 662–672; and the particular or proper law, obliged to applicatively specify them; for it is not an incorporation into consecrated life in general, but into an institute of consecrated life in particular, whose life is moderated by the proper law.

7. *Potissimum institutione* 54–57 broadens this legal dimension of profession by mentioning its issuance within the liturgy, the need for preparation, and the duty to observe all the prescriptions of validity and of intervals.

655 **Professio temporaria ad tempus iure proprio definitum emittatur, quod neque triennio brevius neque sexennio longius sit.**

Temporary profession is to be made for the period defined by the institute's own law. This period may not be less than three years nor longer than six years.

SOURCES: c. 574 §§ 1 et 2; SCR Resp., 15 iul. 1919 (*AAS* 11 [1919] 321–322); CodCom Resp. I, 1 mar. 1921 (*AAS* 13 [1921] 177); *RC* 37, I

CROSS REFERENCES: cc. 200–203, 586, 587, 654, 657 § 2

COMMENTARY

Domingo J. Andrés, cmf.

The norm entrusts to the law of each religious institute the determination of the total period of temporary profession, as well as the subperiods into which it may be divided, on the condition that it not be less than three years nor more than six years, except for an extension *ab homine* of up to nine years, pursuant to c. 657 § 2.[1]

1. *Applicability of the norm.* It is only applicable to religious institutes that have temporary profession prior and relative to perpetual profession. It does not apply to institutes in which profession is made through the formula "*donec in instituto*" or the like; nor in those wherein *definitive* profession is made, which is temporary but renewable on the conclusion of the period of temporary profession (cf. c. 607 § 2). These last two categories of religious institutes are very rare.

2. As the rationale for the norm, it can be said that the determination of the maximum limit is based on experience, according to which, if after six years of temporary profession the member has not matured enough for perpetual profession, it is generally useless and damaging to prolong this

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 355–357; idem, "Profesas de votos temporales a los Capítulos general y provincial," in *Vida Religiosa*, Madrid 1974, pp. 131–137; idem, "Decretum 'Iuris Canonici' et decretum 'Praescriptis Canonum' 2.II.1984. Commentarium canonicum," in *Commentarium pro Religiosis et Missionariis* 65 (1984), pp. 167–186; A. GUTIÉRREZ, "Professio religiosa ad tempus," in *Commentarium pro Religiosis et Missionariis* 63 (1982), pp. 289–312; 64 (1983), pp. 107–123; 67 (1986), pp. 55–58, 249–276 and 321–336.

time; and the determination of the minimum time, in which it does not seem that an experience of less than three years makes better sense.

Regarding the referral of this matter to the proper law, despite it having an imperative character, is due to the desire to apply the principle of subsidarity, by granting greater autonomy to the institute (cf. c. 586).

Regarding the temporary character of the profession, it is justified, despite doctrinal controversy, for reasons we will address below.

3. *Temporary profession* is a genuine religious profession endowed of all the essential components mentioned by c. 654, even though it is adjectival, relative, and pedagogically preparatory to perpetual profession. It is ordered according to the consolidation and development, under a strict religious aspect, of the total formation of the novitiate, as well as the culmination of the experience or mutual probationary period—of the institute and temporarily professed—as it is very well defined in *Sedes sapientiae* 7 § 2.

The exigency of perpetuity that the theology of consecration to God and the constant tradition see inherent in the vow is transferred to the temporarily professing, who must have the intention of perseverance and perpetual consecration, despite its temporary character—of a juridical nature—of his real commitment; otherwise, his profession, even temporary, would be null and not religious.

Likewise, because of its theological solidity, its pedagogical practicality, its security, and the objective guarantees that it offers at the time of making perpetual profession, the legislator has firmly and decisively retained it.

Referring to the unequivocal displacement the *CIC* has made regarding minor and lesser *bonds*, however they are called, by prohibiting the making of a genuine religious profession with them, it is justified by the scarce consistency and credit that the authors grant to said bonds, for the unsatisfactory development of their theology, and for the insufficient results that their experimental period yielded after the Instruction *Renovationis Causam* of 1969.

4. *The period of profession defined in the institute's own law* maybe stated in the constitutions or in the general directories. It must be uniformly applied to all the temporarily professed of the same institute. Although the contrary is not excluded by the canon, it can easily lead to confusion and discrimination.

Between the respect for unity and the rule of the maximum and minimum limits sanctioned here, many variations are possible, which no doubt will be introduced by the proper laws.

5. *Period of three to six years and the extension up to nine years.* This general rule is inspired by the best interests of the institute and pro-

fessed, by commonly allowing the normal limits to achieve it with efficacy and without trauma.

The computation of time is governed by the universal canonical rules expressed in cc. 200–203.

The extension is a faculty *ab homine* that attempts to resolve the difficulty, by an extremely singular exception, of the special circumstances of cases that deserve individual consideration. Nowadays, only a privilege or an apostolic dispensation can permit the nine years of temporary profession to be exceeded (cf. c. 657 § 2).

656 **Ad validitatem professionis temporariae requiritur ut:**

1° qui eam emissurus est, decimum saltem octavum aetatis annum compleverit;

2° novitiatus valide peractus sit;

3° habeatur admissio a competenti Superiore cum voto sui consilii ad normam iuris libere facta;

4° sit expressa et absque vi, metu gravi aut dolo emissa;

5° a legitimo Superiore per se vel per alium recipiatur.

The validity of temporary profession requires:

1° that the person making it has completed at least the eighteenth year of age;

2° that the novitiate has been made validly;

3° that the admission has been granted freely by the competent Superior, after a vote of his or her council;

4° that the profession be express and made without force, grave fear or deceit;

5° that the profession be received by the lawful Superior, personally or through another.

SOURCES: 1°: c. 572 § 1,1°; *RC* 4
2°: c. 572 § 1,3°
3°: cc. 543, 572 § 1,2°, 575 § 2
4°: c. 572 § 1,4°,5°
5°: 572 § 1,6°; CodCom Resp. III, 1 mar. 1921 (*AAS* 13 [1921] 178)

CROSS REFERENCES: cc. 97 § 1, 98 § 1, 137–142, 200–203, 622, 627, 641–643, 646, 648 § 1, 655

COMMENTARY

Domingo J. Andrés, cmf.

The norm provides five requirements *ad validitatem*, so that the juridical certainty, security, and constancy of such an important act as profession may be as great as humanly possible. These requirements are specific and exhaustive; they are, moreover, inorganic, because any one of them, if missing, produces the same invalidating effect as would the absence of the entire bloc.[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 357–366.

1. As the rationale for the group, the same reasons are given that serve as the foundation for the group of impediments (cf. c. 643) and the group of personal qualities (cf. c. 642) necessary for admission to the novitiate. Some of them demonstrate that their invalidating force persists for a prolonged period of time.

In particular, the legislator considers that the nature of profession, incorporation, and state or condition to which the professed accedes, demands the rejection of candidates who are personally, immature, not free, or who are damaging to the vitality, survival, and development of the institute. For this reason, the legislator can incapacitate them by means of impediments.

2. *Requirements*

a) *Eighteen years of age completed* (n. 1°). This age is necessary and sufficient because it is presumed that a younger age does not permit the young man to confront with sufficient guaranties the grave obligations to which he will be subject through profession.

This age is obligatory because it must harmonize with the prescriptions on the impediment of age (less than seventeen years of age completed) to be able to be validly admitted to the novitiate and with the canonical duration of the novitiate (cf. c. 643 § 1,1°). Likewise, it is coherent with the canon that fixes the majority of canonical age at eighteen years (cf. c. 87 § 1).

It does not seem possible to cite powerful reasons for its dispensation by the Holy See, but it is nevertheless always possible.

b) *Valid novitiate* (n. 2°), pursuant to the universal and proper laws. The reason is evident, for it forces again a retrospective examination of verification of all the conditions of validity for the novitiate.

It is practically impossible to think of a rational dispensation of the global or total nature of all that is implied by this requirement of the universal and proper laws; it would be a kind of deathblow to the novitiate and would contain something absurd in law. Dispensation, in contrast, of some chapter or isolated cause for which the novitiate could be held invalid, seems possible, for it would be reduced to the dispensation of that impediment, condition, or requirement in question.

c) *Admission by the competent superior* (n. 3°), understood as a lawful act of internal governance rooted in the ordinary and public power, issued by a religious superior of the institute, competent and after the intervention of his council, by whose act is conferred on the novice the faculty of making temporary profession.

It is an act radically different from the reception of profession and, in contrast to this act, it must be maintained that it is practically impossible for it to be delegated. The intrinsic importance of the act of profession, the collegial manner of deliberating admission, and the constant use and

practice of all institutes, among other factors, converge so that the faculty of delegating this act is denied to the competent superior, keeping in mind that his vicar, if he were to give permission in the capacity of superior, he would not do so with delegated power, but ordinary power, although vicarious, for he is a major superior (cf. c. 620). The existing reasons in this regard, previously outlined in relation to admission to the novitiate (cf. c. 641) are repeated here again, but in a form more sharp and convincing by the presence of profession.

d) *Express profession, made without force, fear, or deceit* (n. 4°): express because only by multiplying the demonstrative gestures and signs, is there conferred on the making of the profession the certainty and security of a genuine relevant juridical act which are appropriate to its existential importance. The proper law, to state this explicitly, normally demands a formula, ritual, signature, explicit mention of the three vows, time, etc.

The three faults stigmatized as disqualifying of the person and invalidating of the relevant act are the same that c. 643 classifies as conditions of validity for admission to the novitiate, now endowed of more gentleness, clarity, and exigency, in relation to the greater ecclesial weight and objective of the act to which is referred.

e) *Reception by the lawful superior* (n. 5°) is an act of governance belonging to the function of sanctification. Regarding the subject it deals with, it is rooted in the ordinary public power, accomplished by a lawful superior, personally or by another, by virtue of which is received—in the name of the Church and the institute itself—the surrender and the vows of the professing, and which incorporates him into the institute which the superior represents and for in which the professing professes.

To the essence of this act of acceptance belong the reception of the vows and the acceptance of the surrender or *traditio*. Everything else is supplementary, a part of the rich liturgical symbolism of the act, but not belonging to its substance.

The clarification *personally or through another* explicitly anticipates the possibility that several people can lawfully receive the profession. Nevertheless, it must always be a competent superior who does it, although he desires to act and receive the profession representing others for this act. They can be superiors or not, clerics or laypersons, members of the same institute or another institute, etc., as long as two essential conditions are observed: *a*) that they are designated by the competent superior, or by the proper law that precedes such superior; and *b*) that, at the time of receiving the profession, they act by the mandate of the superior and in his name. This mandate must be genuine and clear, not presumed, but it can be explicit or tacit, general or particular to a case.

657 **§ 1. Expleto tempore ad quod professio emissa fuerit, religiosus, qui sponte petat et idoneus iudicetur, ad renovationem professionis vel ad professionem perpetuam admittatur, secus discedat.**

§ 2. Si opportunum vero videatur, periodus professionis temporariae a competenti Superiore, iuxta ius proprium, prorogari potest, ita tamen ut totum tempus, quo sodalis votis temporariis adstringitur, non superet novennium.

§ 3. Professio perpetua anticipari potest ex iusta causa, non tamen ultra trimestre.

§ 1. When the period of time for which the profession was made has been completed, a religious who freely asks and is judged suitable is admitted to a renewal of profession or to perpetual profession. Otherwise the religious is to leave.

§ 2. If it seems opportune, the period of temporary profession can be extended by the competent Superior in accordance with the institute's own law. The total time during which the member is bound by temporary vows may not, however, extend beyond nine years.

§ 3. Perpetual profession can, for a just reason, be anticipated, but not by more than three months.

SOURCES: § 1: cc. 575 § 1, 577 § 1
§ 2: c. 574 § 2; *RC* 37, I
§ 3: cc. 555 § 1, 2°, 572 § 1, 3°, 577 § 2; *RC* 26

CROSS REFERENCES: § 1: cc. 654–655, 658–660, 662–672, 694–704
§ 2: cc. 200–203, 587, 607 § 2, 641, 653–655, 1191
§ 3: cc. 200–203, 649 § 2, 654, 658, 1191, 1192 § 1

COMMENTARY

Domingo J. Andrés, cmf.

The norm forms an organic group, compact and well constructed, that resolves cases regarding the possibility of renewing temporary profession, extending its term, and anticipating perpetual profession. It is more specific than the parallel norm of the *CIC*/1917, even for having displaced to a more appropriate position the forms of dismissal or expulsion (cf. cc. 694–698).[1]

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 366–373.

1. As for the rationale for the norm, it can be adduced that, given the nature of temporary profession in its projection towards perpetual profession, it was absolutely imperative to regulate the complete mechanism of its renewal, not leaving it to the arbitrary discretion of the institute, nor much less to that of the professed.

2. *Renewals* (§ 1). These are only possible and lawful for those who fulfill the following requirements: *a*) being temporarily professed; *b*) conclusion of the prior period for which he has made a profession; *c*) free and spontaneous petition for renewal; and *d*) proven suitability to renew. All these conditions are deducible from the logic of the text of the norm.

3. *Making of perpetual profession* (§ 1). This is only possible and lawful for those who fulfill the following requirements: *a*) being temporarily professed; *b*) fulfillment of the prior periods fixed by universal and proper law; *c*) free and spontaneous application, knowing that freedom must now be definitively pure, more than in the renewal phases; and *d*) be judged suitable by the competent superior.

If these requirements are met, the temporarily professed must be admitted to perpetual profession. Otherwise, the following must be shown: *a*) that the professed has not fulfilled the minimum period of temporary profession, therefore he must wait; *b*) that it is obtained through force, grave fear, or deceit, so he must be rejected to avoid the nullity of the act; and *c*) that he is not judged to be suitable and, consequently, he is not admitted because he cannot be admitted. He must leave on his own, which is radically different from expulsion, which is the subject of cc. 694–701.

4. *Leaving or separation from the institute* (§ 1). This is a matter of an act imposed on the temporarily professed, not on the superiors.

It occurs in one of these three cases: *a*) if the professed is not admitted to renewal or perpetual profession because, upon fulfilling his temporary vows and not taking perpetual vows, he stops being a member of the institute; *b*) if the professed himself does not freely ask for renewal or perpetual profession, for the same reason; and *c*) if, having lawfully applied for one of the two professions, the superior does not judge him to be suitable, or discovers that he has applied but not freely, because in neither of the two cases can the superior admit him.

The juridical nature of this non-admission consists in the absence of a lawful positive act of admission. It is evident that it lacks a penal character; thus, it is duly resolved in this context and not in the context of expulsion from the institute. But the ex-professed, if he feels himself to have been treated unfairly, can pursue a devolutive *generic* appeal, not a proper one, to the internal hierarchical superiors, or in the proper case, to the Holy See. Obviously, it would be contradictory for this appeal to have a suspensive effect. Through the appeal, he should request admission and compensation for moral damages that the non-admission has caused him.

5. *Extension of the temporary profession* (§ 2) is a delay of perpetual profession, appropriate in length within the limit of nine years, granted by the competent superior.

It is interpreted in terms similar to those described in respect to the extension of the novitiate (cf. 653 § 2), and the conditions of its being granted are the following: *a*) appropriateness as a simple and facile cause; *b*) facultative concession, not obligatory;

c) the competent superior for the granting or use of the faculty; and *d*) a time limit that can be three years (if the maximum ordinary limit of temporary profession was, by proper law, for six years) or six years (if the same limit, in equal conditions, was three years).

6. *Anticipation of the perpetual profession* (§ 3). This is interpreted in terms similar to those of anticipation of the first temporary profession (cf. c. 649 § 2), and the conditions of concession are the following: *a*) existence of a just cause; *b*) facultative concession by the competent superior; and *c*) a maximum time limit, without appeal, of three months.

The faculty of anticipating the date of renewals of temporary profession is not regulated as it was in the *CIC*/1917. By the logic of the law, the very fact that the first and perpetual professions can be anticipated (since they are decisive) makes it unnecessary to make express mention of this faculty. It is sufficient to avoid the danger that, by multiplication of anticipations poorly counted and poorly distributed, the time necessary for a valid perpetual profession could be affected.

658 **Praeter condiciones de quibus in can. 656,nn. 3, 4 et 5 aliasque iure proprio appositas, ad validitatem professionis perpetuae requiritur:**

1° vigesimus primus saltem aetatis annus completus;

2° praevia professio temporaria saltem per triennium, salvo praescripto can. 657 § 3.

Besides the conditions mentioned in can. 656, nn. 3°, 4° and 5°, and others attached by the institute's own law, the validity of perpetual profession requires:

1° that the person has completed at least the twenty-first year of age;

2° that there has been previous temporary profession for at least three years, without prejudice to the provision of can. 657 § 3

SOURCES: 1°: c. 573
2°: cc. 572 § 2, 574 § 1; SCR Resp., 15 iul. 1919 (*AAS* 11 [1919] 321–322); CodCom Resp. I, 1 mar. 1921 (*AAS* 13 [1921] 177)

CROSS REFERENCES: cc. 200–203, 587, 654–657

COMMENTARY

Domingo J. Andrés, cmf.

The norm limits itself to imposing six requirements for the validity of perpetual profession. It is simpler and clearer than its parallel norm in the *CIC*/1917, an effect of having regulated separately perpetual and temporary professions.[1]

1. Regarding the rationale of the norm, in relation to the justifying reason for the bloc of requirements for validity for first profession, see the commentary on c. 656. The requirements are imposed in proportion to the differences between the professions.

2. *Requirements*:

a) Admission by the competent superior.

b) Explicit and free profession.

c) Acceptance or reception realized by the lawful superior.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 373–375.

These three requirements are identical to those contemplated in nos. 3° and 5° of c. 656 (see commentary), but they are now imposed and have more of a mandatory nature due to the perfection of perpetual profession as compared to temporary profession.

d) *Twenty-one years of age completed*: the justification for a certain age substantially coincides with those that justify the age for the novitiate and for the making of first profession. The adverb *saltem* is interpreted in two converging manners: as an echo of the possible six-year period *a iure* (cf. c. 655) that would situate perpetual profession in twenty-four years, and the possible three-year period *ab homine* of opportune extension (cf. c. 657 § 2) because it could turn out to be a maximum of twenty-seven years; and as an indication of a certain predilection of the law, *or intentio*, of being more favorable to a greater age, especially if the institute imposes it in consideration of the proper charism and mission of the institute.

e) *Previous temporary profession*. Repeating the norm of c. 655, and with the purpose of resolving all doubt that direct perpetual profession is prohibited, it insists that at least a minimum of three years of temporary profession precede it. But, the faculty of anticipation for no more than three months must remain intact; what this means is that this anticipation does not affect the minimum time of profession, nor, correlatively, the consistency of this fifth requirement (cf. c. 657 § 3).

f) *Possible conditions for validity added by the institute's own law*. While for temporary profession the faculty to add other requirements (cf. c. 656) is not explicitly granted to the proper law, the faculty is granted for the making of perpetual profession.

Different requirements can arise in the exercise of this faculty. In any case: *a*) it must be inspired by the charism, nature, mission, and tradition of the institute in question; *b*) it must revolve, in one form or another, around the requirements that c. 656 establishes for first profession; and *c*) they will be subject to dispensation, with just cause and in proportion to the order that they occupy in the proper law, by the major superior with the consent of his council, unless it is otherwise explicitly determined that, if included in the constitutions, it should be approved by the Holy See.

3. *Effects of perpetual profession*. The particular effects (obligations and specific rights) following perpetual profession are not alluded to. Different factors may have influenced this absence: the recent controversy regarding temporary profession to which jurisprudence does not offer a satisfactory clarification; the existing lists are not at all convincing; and that the scarce positive determinations that do exist, which can be considered as effects certainly derived from perpetual profession, with the explicit exclusion of temporary profession, do not admit a classification or a brief and organic mention.

Nevertheless, it may be that the legislator believes that what is affirmed axiomatically by c. 654, regarding profession is sufficient for both

temporary and perpetual profession, namely that they lead to rights and obligations in universal and proper law. This is an extremely skillful way to resolve the problem, and it also clearly establishes *a)* that the greatest number [the best and most substantial] of rights and obligations come from first profession; *b)* the few that are acquired through universal law and *a fortiori*, through proper law, are not worthwhile to enumerate; and *c)* therefore, and in its own way, the decision revalidates and reinforces the option of the Church to maintain temporary profession. This should be done with due regard for better judgment about a weighty, but still debatable, question.

ART. 4
De religiosorum institutione

ART. 4
The Formation of Religious

659 **§ 1. In singulis institutis, post primam professionem omnium sodalium institutio perficiatur ad vitam instituti propriam plenius ducendam et ad eius missionem aptius prosequendam.**

§ 2. Quapropter ius proprium rationem definire debet huius institutionis eiusdemque durationis, attentis Ecclesiae necessitatibus atque hominum temporumque condicionibus, prout a fine et indole instituti exigitur.

§ 3. Institutio sodalium, qui ad sacros ordines suscipiendos praeparantur, iure universali regitur et propria instituti ratione studiorum.

§ 1. After first profession, the formation of all members in each institute is to be completed so that they may lead the life proper to the institute more fully, and fulfil its mission more effectively.

§ 2. The institute's own law is, therefore, to define the programme for this formation and its duration. In this, the needs of the Church and the conditions of people and times are to be kept in mind, in so far as this is required by the purpose and character of the institute.

§ 3. The formation of members who are being prepared for sacred orders is governed by the universal law of the Church and the institute's own programme of studies.

SOURCES: § 1: *SCong* 8 § 2; *PC* 18; *OT* 22; *PO* 19; *ES* II: 33, 35; *RC* 4, 10: I; *RFIS* 100
§ 2: *PC* 18; *ES*, II, 38; *RFIS* 101
§ 3: cc. 587–591; *SS* IV; *SCong* 40–46; *OT*; *ES* II: 34, 35; *REU* 73 § 2; 77, 2°; *RFIS*

CROSS REFERENCES: § 1: cc. 114 § 1, 204 § 1, 207 § 2, 216, 529 § 2, 574 § 2, 586 § 1, 598 § 2, 607 §§ 2–3, 614, 652 § 2, 654–655, 661, 667 § 1, 689 § 2, 725, 735 § 3, 738 § 1
§ 2: cc. 222 § 1, 230 § 3, 256 § 2, 269 § 1, 333 § 2, 337 § 3, 353 § 3, 587, 607 § 3, 640, 1748
§ 3: cc. 232–264, 607 §§ 2–3, 659 § 2, 1008, 1024–1052

COMMENTARY

Domingo J. Andrés, cmf.

Together with the following canon, this canon regulates the fundamental aspects regarding the formation of the newly professed. It establishes a grave precept of progressive perfection of formation; it imposes on the laws of the institutes the development of a program or statute whose principal considerations are stated later in the following canon; and it emphasizes the particularity and the exigencies of formation for members who are preparing themselves to receive sacred orders.[1]

1. The rationale for this norm is explicitly stated in its text and is classifiable as *vital* and *operative*: the progressive completion of the life of the institute and the ability to better respond to its mission.

But, in the sources for the norm, there are other specifications: the need for everyone to be able to complete novitiate formation and the intrinsic exigency of renewal and adaptation, two dimensions maximally dependent on this formation.

In its brevity, the norm demonstrates consolidation of the autonomy that, on this subject, all the institutes know how to assert. At the same time, it avoids the evident risk of the deterioration of the norms when there is an excess of detail.

2. *Subjects, beginning, and ends of this formation* (§ 1). By sanctioning a successful experience of life, the norm clearly reveals the passive subjects to which it is applied: every institute, all the institutes and, within them, all the members according to their different function.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 376–384; G. ACCORNERO, "Le tappe della formazione," in *La formación de los religiosos. Comentario a la Instrucción "Potissimum Institutioni"* (Rome 1991), pp. 267–276; G. FERNÁNDEZ, "Los religiosos candidatos a los ministerios presbiteral y diaconal (Cap. VI)," ibid., pp. 325–344.

"After first profession" is a phrase that delimits the term *a quo*, leaving suspended the reference to the term *ad quem*, intending thus to combine better the permanent formation sanctioned by c. 661.

As immediate ends of this formation, *the life and mission* of the institute are enumerated, to which the following provisos must be added: *a*) that they do not commence to exist and become present now, but they already summoned the aspirant and had a strong presence in the novitiate; and *b*) that its end or exhaustion is not foreseen, except with the death of the religious. This speaks to the continuity and constant charism that are intended to be emphasized by its mention in this context. It is the adverb *aptius* that channels the incessant progression and opening towards the future.

3. *The formative statute and the duration of this formation* (§ 2). It is prescribed that the proper law develop a defined formative statute (plan, *ratio*, program, project, directory, regulation), fix the duration of this stage, appropriate to the development imposed by the statute itself, and have in mind the frame of reference in which the development of the program must proceed: the Church and the World, according to the current effects of these magnitudes upon the nature and end of the institute.

a) *The statute*, by universal law, must not lack the following elements: obligatory nature, central objective (cf. § 1), purposes of its content and development (§ 1), frame of inspiration (§ 1), basic contents (cf. c. 652 § 2), apostolic experiences, and principal considerations (cf. c. 660 § 1), people or team responsible for formation, duration.

b) *The duration of this stage*, of which the norm only fixes its beginning, is generally the entire period of temporary vows; but, there is no problem, unless there is some objection, in prolonging it after the making of perpetual profession, especially if this had taken place after the minimum three years of temporary profession.

A minimum of six years and a maximum of nine or more, in prudent imitation of the period formation that aspirants to holy orders undergo, could make up an appropriate duration: if the Church demands patience in this question, no one should show undue haste.

4. *The formation of those to be ordained in sacred orders* (§ 3), for those who aspire to the presbyterate, as well as to the diaconate prior to the presbyterate, or to permanent diaconate, the matter must be governed by the universal and proper laws.

The *universal law* in this regard is sufficiently explicit and detailed, though obliged for reasons of brevity and general harmony of this formative issue. Canons 232–264 of the *CIC* in particular will govern the formation of clerics, except in some points that the religious proper law already specifically regulates: cc. 1008–1054 regarding the sacrament of sacred orders, particularly those that prescribe requirements, irregularities, impedi-

ments, documents, and final scrutiny of the candidates (cf. cc. 1026–1049) and all those that, dispersed in the *CIC*, refer to the subject. Outside the *CIC*, the documents of the Holy See that are concerned with the subject, as well as the guidance of the Bishops' conferences given in the execution of these or other universal documents, are applicable.

The *institute's own law*, in contrast, will be substantially that which is stated in the individual rationale for each institute, which has been spoken of previously; likewise the great principals and norms that, before developing said rationale or statute, might be already stated in the constitution and/or in the general directory. All this proper law must be in subordination to and in harmony with the universal law, but it must be creative and original, inspired in the charism and mission of the institute in all those places not covered by the universal law.

As the applicative law now in effect, nowadays capable of being found outside the *CIC* and issued by the Holy See on the subject of formation, chapter VI of *Potissimum institutioni* (nos. 101–109) must be remembered, which is entirely dedicated to the candidates for the ministry, and in which precious differentiated guidance is given, directed to those who aspire to the lay ministry and the ordained ministries of diaconate and presbyterate, with the particularities demanded by the quality of religious, both at the time of being ordained and by their belonging to the diocesan presbyterate.

660 **§ 1. Institutio sit systematica, captui sodalium accommodata, spiritualis et apostolica, doctrinalis simul ac practica, titulis etiam congruentibus, tam ecclesiasticis quam civilibus, pro opportunitate obtentis.**

§ 2. Perdurante tempore huius institutionis, sodalibus officia et opera ne committantur, quae eam impediant.

§ 1. Formation is to be systematic, adapted to the capacity of the members, spiritual and apostolic, both doctrinal and practical. Suitable ecclesiastical and civil degrees are to be obtained as opportunity offers.

§ 2. During the period of formation, members are not to be given offices and undertakings which hinder their formation.

SOURCES: § 1: *SS* III, IV; *PC* 18; *ES* II: 33, 36; *RFIS* 3; *MR* 31, 32
§ 2: c. 589 § 2; *SCong* 26 § 2; 40 §§ 6 et 7; SCR Instr. Religiosorum institutio, 2 feb. 1961, 49; *PC* 18

CROSS REFERENCES: § 1: cc. 245–246, 248–252, 254–258, 277, 279 § 2, 285–286, 573–574, 576–577, 587–588, 595–602, 607 §§ 1 et 3, 608, 611, 618–619, 640, 652, 659, 661–664, 672–683, 817
§ 2: cc. 622, 627, 636, 651 § 1, 655, 671

COMMENTARY

Domingo J. Andrés, cmf.

The norm imposes eight principal considerations on the formation to be imparted following first profession, by which it must be inspired. Besides the joint meaning that the norm has with c. 659, specifically now, through the explanations of said principal considerations, the legislator intends to give consistency, seriousness, unity, and profundity of perspective to the plan of formation.[1]

1. The rationale for the present canon consists in avoiding, by the binding explanation of this list of master inspiring lines, that the formative statute of each institute, projected as a genuine sample of autonomy and

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 384–392.

pluralism by the universal legislator, become a plan lacking in unity and markedly different among the religious institutes.

2. These considerations, closely allied, are the following:

a) *Systematic.* Positively, it implies planning, rationality, tenacity in the use of efficacious initiatives and periodic revisions of the formative process. Negatively, it classifies as insufficient and discardable everything that is sporadic and unconnected or dispersed and arbitrary. It is a pedagogical law in the entire process of formation. The penalty for its not being fulfilled consists in not arriving at anything lasting or valid.

The systematic nature is clearly deduced from the norm that imposes the drafting of the statute or*rationale* as well as a pre-established duration. It is implicit in the principle that formation must occur in houses suitable to this purpose; and, likewise, it is developed by the figures of the teachers and those responsible for formation. Finally, the opportune obtaining of the relevant academic degrees is presupposed.

b) *Adaptation to the capacity of the members.* This line skillfully comports with the systematic nature because this nature is a general law in the entire formative process. The penalty for its not being fulfilled lies, at least, in the waste of valuable time, and sometimes even in serious damage to the members.

Intentionally, the norm does not impose adaptation of the capacities of those in formation to those of religious, for other canons do this, nor to the nature and character of the institute that should bear on that capacity. It demands adaptation to the *personal* capacity—subjective—of the member in formation, constituted by his character, intellectual endowment, and sensitivity.

c) *Spirituality.* Religious formation must be nourished by the content, values, subjects, and virtues special to religious spirituality in general, and to those of each institute in particular, capable of being located especially in their constitutions and, for which the universal law is referenced, in the multitude of canons referring to the subject (cf. cc. 573, 574, 598–602, 619, 652 § 2, 662–664, 666–668).

The penalty for not systematically fulfilling this non-repealable individual statute of religious formation is that, in the end, men and religious of spirit will not have been formed, but instead men of simple human stature, very solid, perhaps, but unidentified, little matured as religious, and constantly tending to separate themselves in many different forms, not excluding from the definitive forms of their institute.

d) *Apostolicity.* It is, likewise, specific of religious formation, since it is religious. It is nourished by the integration of the values advanced by the Church and by its universal law, and, in particular, by the values immediately required by the proper law, in light of the ends and the nature of each institute.

By universal law, the apostolic line possess abundant foundations and references derived from the consecration for the mission, such as they are stated, among others, in cc. 573 § 1, 574, 618, 648 § 2, 652 § 2, 673–683.

e) *Doctrine.* Direct nourishment for spirituality and apostolicity, it is also the specific doctrine of this formation since it is religious. Like the preceding lines, it derives its content from the universal law and from the law of the institute. The penalty for its systematic neglect would be that of "forming" religious lacking in one of the necessary supports for sanctification, spirituality, and apostolate or ecclesial missions.

By universal law, doctrine possesses a consistent bloc of values rooted in profession. They can be discovered, among others, in 592 § 2, 599–601, 607 § 2, 618, 619, 652 § 2, 248–257.

f) *Practicality.* This is paired inseparably with doctrine, against which it must be weighed and by which it must be complemented, nourished, and offset, avoiding that one grow at the expense of the other.

It constitutes, moreover, the natural crystallization of all the lines, in respect to which it is established as a measure and criterion of efficaciousness and validity. The penalty for its systematic neglect will be the formation religious who are strangers to reality, unsatisfied, maladjusted, and insecure.

The law is, in itself, a useful tool imposed or oriented in conformity with the ethical principles that inspire it. The law of the Church, whose foundations are theological, Christological, supernatural, spiritual, and historical-traditional, also can be proposed as a practical, useful tool. Therefore, its faithful fulfillment is a profound way of sculpting into one's life, which is the practical consequence of religious formation. Canons 255 and 256 contain an extremely clear criterion of practical apostolic usefulness in formation.

g) *Obtaining suitable academic degrees as the opportunity offers.* This states a certain tone of innovation with respect to the preceding lines. It is immediately and directly related, nevertheless, to the *doctrinal* line, for the majority of the degrees and diplomas necessary to a religious will be directly related to doctrine. However, it must be contrasted with the adjustment to the capacity of the member in formation, for obvious reasons. It must also be in relation to the *system* and to the concentration of the courses of the members in formation for the demands of the course of studies that lead to the obtaining of the degrees.

The *appropriateness* of obtaining a degree will depend on innumerable objective and subjective factors, especially the needs imposed by the mission of the institute and the real talents of the member in formation.

Ecclesiastical degrees, for their content and purpose, likewise for the condition of the member in formation and for the state to which he be-

longs, principally and in equal conditions, must be preferred over civil degrees, except when they are obtained *in utroque*, though this is not always possible.

h) *Preferential dedication for members in formation* (§ 2). The norm prohibits the assignment of *offices and undertakings* that hinder formation. Having in view the whole of the system, the gravity of this requirement must be acknowledged. All plans of formation can be reduced to a dead letter, if the member in formation lives in another different world, due to the dispersion to which his activities could lead.

Likewise, the same norm permits the possible assignment of offices and undertakings that do not hinder formation; it can even be deduced that they are recommended to the extent they support formation.

In practice, however, it is difficult to determine this unless much attention is paid to the results that are manifested in the member in formation. It is up to the proper law and especially the superiors and those responsible for formation to discern this in each case.

3. *Potissimum institutioni* 58–65, considering the text of the canonical norms, contains persuasive arguments regarding the meaning and particular demands of this period, especially the habit of continence, ecclesiastical studies, initiatives to support maturity of the religious, the intense immediate preparation for the making of perpetual profession.

661 **Per totam vitam religiosi formationem suam spiritualem, doctrinalem et practicam sedulo prosequantur; Superiores autem eis adiumenta et tempus ad hoc procurent.**

Religious are to be diligent in continuing their spiritual, doctrinal and practical formation throughout their lives. Superiors are to ensure that they have the assistance and the time to do this.

SOURCES: c. 129; *SS* IV; *SCong* 50–53; *CD* 16; *PC* 18; *PO* 19; *ES* II: 19; *RFIS* 100; *MR* 24–3

CROSS REFERENCES: cc. 279 § 2, 622, 654, 659–660, 670, 672

COMMENTARY

Domingo J. Andrés, cmf.

This norm, which must be interpreted in connection with cc. 659 and 660, institutionalizes the rich subject of permanent formation in a concise, pithy, way by placing the responsibility for all religious principally on the Superiors.[1]

1. Regarding the *rationale*, several reasons justify its codification at the universal level: *a*) current insistence of the doctrine and persistent sensitivity, decidedly favorable to its necessity; *b*) the extremely strong tradition in the same commitments signified by religious consecration, which commitments continually need to be perfected; *c*) the total surrender implicated by profession, the summit of baptismal consecration, which incessantly needs to renew its gestures, signs, and expressions; its conception or thought and the relative actions; and *d*) constant renewal, or state of renewal, no longer reducible to a transitory post-conciliar occupation, but a permanent task intrinsic to religious life, as to the Church, and which, principally, depends on the seriousness and continuity with which the formation of the persons committed to the mission of the Church is carried out.

2. *The idea of continuous formation*. In light of cc. 659–661, and aided by other ecclesial documents, it can be defined as a formative process of maturation of the existential commitment, which the religious makes for life and for which, since he is baptized, consecrated, and a pro-

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 393–400; G. ACCORNERO, "Le tappe della formazione," in *La formación de los religiosos. Comentario a la Instrucción "Potissimum Institutioni"* (Rome 1991), pp. 271–276.

fessed religious, must be oriented towards the incessant establishment, maintenance, and reform of his vocational identity and of the consequences that are derived from his profession.

The proper laws must channel this formative process especially in its spiritual, doctrinal, and practical dimensions, under the immediate, impelling responsibility of the superiors.

3. *Throughout their lives* is the phrase that states, for each religious, the uninterrupted duration of the formative process.

Its imperative nature appears very clearly in the verb *prosequere* which, referring even etymologically to the process already initiated with the novitiate, must be pursued with nuances of diligence, meticulousness, insistence, solicitude, and incessant application, such as all this has been suggest by the meaning of the adverb *sedulo*.

4. *The principal considerations.* The norm specifies only three: spirituality, doctrine, and practice. The intention is evident for synthesizing these three, all that c. 660 states as considerations proper to the immediate stage of making of first profession. For this reason, they must also be understood in the systemic nature, adjustment to the receptive capacity of the member in formation, apostolic nature, and opportune qualification through academic degrees.

5. *The dual responsibility of the superiors.* With skill and realism, the norm implies to all superiors, to support in their office as such, the duty of furnishing the proper assistance and instances of permanent formation to each and every member in formation.

Without the imperative contributions proclaimed by the canon of the superiors, it seems indubitable that permanent formation could remain only a name, good literature and good intentions, together with an unproductive discretion left to singular persons, who, by proceeding from their own impulses in this field, would lead to efforts very probably sterile, unordered, and causing confusion.

6. *The assistance available from the superiors.* They must culminate in the religious as an individual person, not in the community, for the community is for the religious before he is for the community. If they come to be planned at the community level, as an act on behalf of the community, they must be measured in the efficacy and utility by the manner and degree of benefit that the religious report singularly, not by how they have been externally and bureaucratically conceived while forgetting such individual benefit.

Elements of the particular assistance to which the norm alludes include a good team of instructors at the service of the idea and the community; courses of renewal, breadth, and seriousness, and appropriate subject matter; sabbatical years for individuals; solidarity with other institutes in accepting and contributing pertinent initiatives; due preponder-

ance of the spiritual consideration; attentive consideration of the special stage of that each person, during his life, can live and is decisive for it, while it cannot be it for the others; etc.

7. *The means and the time that the superiors must offer* are clearly different from the prior assistance, although it may be said that it constitutes a manner of assistance of extraordinary practical importance, for if the individuals do not have time and specific assistance to benefit from the plans and initiatives of permanent formation, they will be reduced to literature.

As long as it is necessary, the superior shall free a religious from responsibilities that might hinder his participation in the plans and initiatives of formation. He shall also grant the necessary temporary permission to make this participation possible. He shall also make use of his authority so that members of the institute utilize the facilities offered for their formation.

Superiors of the clerical institutes must not forget that c. 672 (in relation to c. 279 § 2) prescribes for clerics the obligation of frequently attending theological and pastoral classes, congresses, and conferences to this end.

8. *Potissimum institutioni* 66–71, by leaving precisely from the explicit cite of the text of c. 661, extends itself to the reaffirmation of the reasons that form the foundation of the continuity of formation, and to the report of different emphasized initiatives that the institutes can carry forward.

CAPUT IV
De institutorum eorumque sodalium obligationibus et iuribus

CHAPTER IV
The Obligations and Rights of Institutes and of Their Members

662 **Religiosi sequelam Christi in Evangelio propositam et in constitutionibus proprii instituti expressam tamquam supremam vitae regulam habeant.**

Religious are to find their supreme rule of life in the following of Christ as proposed in the Gospel and as expressed in the constitutions of their own institutes.

SOURCES: c. 593; *LG* 46; *PC* 1–2a; *PO* 18; *ES* II: 16; *ET* 12

CROSS REFERENCES: cc. 573, 598ff, 607, 654

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

1. *Chapter IV in the system of the Code*

Within the organizational and institutional structure of the canonical system, consecrated life constitutes a particular *status* (cc. 207 § 2, 574 § 1, 588 § 1). Attached to it are certain rights and duties, as occurs with the *status clericalis* and *staus laicalis* (cc. 289 § 1, 219 and 1134). Therefore, the logic of the Code, specifically that relative to the state of consecrated life, requires the chapter that we are about to examine, which plays an important role. The canons that comprise it concisely gather the basic contents of the consecrated life upon a base of revitalized theological sources and the ecclesiology of Vatican Council II.

The prescriptions of these canons are proposed to impel the religious towards the contemplative sphere by procuring for him all the instruments capable of sustaining him in the tiring but happy road to perfection that has been undertaken upon professing the evangelical counsels (cc. 662–667).

Ascetic-mystical elevation, achieved by constant interior work of the spirit, does not mean that one may forget the earthly and contingent aspect of the world and thus be freed from it. The elevation's purpose is to make one's path more practicable and the following of Christ more precious (cc. 668–672).

From this perspective, this chapter is an *innovation* of the new legislation, in relation to the repealed law, from which, nevertheless, different norms are gathered together. Along the same lines, *privileges* are no longer spoken of (cf. *CIC*/1917, cc. 613–625) [terminology that is rejected by modern society] but *rights*, for they have exactly that juridical importance, and new criteria and conduct are proposed.

These directives and perspectives are reaffirmed and illuminated by the recent document of the Congregation for Religious, the basic subject of which is fraternal life in common, assessed in its present manifestations, rich in hope but loaded also with disappointment, capable of bringing about not only positive effects but also other more questionable ones.[1]

2. *Canon 662*

In the system of legislation relative to religious institutes, this canon radically recapitulates the essence and purpose of consecrated life. It is situated as a point of reference and coordination for all the regulations, since in it are implicitly present the institutional and organizational aspects that, obviously, are made explicit in their corresponding place.

It is the key work for reading for the entire system, particularly the canons that follow this chapter about rights and obligations, which are configured, with respect to the present canon, as means and instruments to make real the following of Christ.

Not a few times has consecrated life been classified as *sequela Christi*, poor, humble, chaste, obedient, suffering, master, evangelizer (e.g., in cc. 573, 598ff); in contrast, in this canon, the *sequela Christi* is presented in its absolute and captivating character as the *supreme rule* of life for religious.

1. Cf. CICLSAL, *La vita fraterna in comunità, "congregavit nos in unum Christi amor"* (Rome 1994), pp. 68ff.

The imperative content of the canon is founded on evangelical and ecclesial teaching. The affirmative reply to the religious vocation supposes a first act of freedom. This first freedom must be followed by a genuine interior and exterior faithfulness to the freely contracted moral-juridical bond.

The evangelical foundation is in the reply of Jesus to the young man who was attracted to the great riches of the spirit: "If you would be perfect, go, sell what you possess and give to the poor, and you will have treasure in heaven; and come, follow me" (Mt 19:21).

The ecclesial foundation is supported in *Perfectae caritatis* 2a, the text of which is included in the canon with some variations: "Since the final norm of the religious life is the following of Christ as it is put before us in the Gospel, this must be taken by all institutes as the supreme rule."

Once the supreme and binding ideal of religious life is affirmed, the normative text hurries to indicate the criteria and basic methods to realize the following of Christ; it is founded on two pillars: just as it was "proposed in the Gospel and as expressed in the constitutions of their own institutes."

Two terms merit particular attention: "propositam" and "expressam." In effect, since the *purpose* of the Gospel covers a very broad range of charisms aimed toward the realization of the following of Christ, it will be the constitutions that *express* the specificity of the charism elected by the founder, to whom the institute and the individual members are obligated, if they do not want to lose their own identity. It follows from this that the following of Christ, received as the "supreme rule," will be realized through the charism specific to the institute; in turn, this charism is an *expression* of the multiform purpose of the Gospel.

It is evident, moreover, that the religious must specify his own following of Christ in a manner conforming to the prescriptions of his institute, excluding all private initiative or response to a presumed personal charism. This is required by the very fact of his incorporation into the institute (c. 654).

In his own institute, the religious will find the environment and conditions favorable to the following of Christ, which is the cause and model of his life, by utilizing the spiritual and material means proposed in the following canons.

In this way, consecrated life will become that value and testimony described in c. 607: "Religious thus consummate a full gift of themselves as a sacrifice offered to God, so that their whole existence becomes a continuous worship of God in charity."

663 **§ 1. Rerum divinarum contemplatio et assidua cum Deo in oratione unio omnium religiosorum primum et praecipuum sit officium.**

§ 2. Sodales cotidie pro viribus Sacrificium eucharisticum participent, sanctissimum Corpus Christi recipiant et ipsum Dominum in Sacramento praesentem adorent.

§ 3. Lectioni sacrae Scripturae et orationi mentalivacent, iuxta iuris proprii praescripta liturgiam horarum digne celebrent, firma pro clericis obligatione de qua in can. 276 § 2, n. 3, et alia pietatis exercitia peragant.

§ 4. Speciali cultu Virginem Deiparam, omnis vitae consecratae exemplum et tutamen, etiam per mariale rosarium prosequantur.

§ 5. Annua sacri recessus tempora fideliter servent.

§ 1. The first and principal duty of all religious is to be the contemplation of things divine and constant union with God in prayer.

§ 2. Each day the members are to make every effort to participate in the Eucharistic Sacrifice, receive the most holy Body of Christ and adore the Lord himself present in this sacrament.

§ 3. They are to devote themselves to reading the Sacred Scriptures and to mental prayer. In accordance with the provisions of their own law, they are to celebrate the liturgy of the hours worthily, without prejudice to the obligations of clerics mentioned in can. 276 § 2,3°. They are also to perform other exercises of piety.

§ 4. They are to have a special devotion, including the marian rosary, to the Virgin Mother of God, the example and protectress of all consecrated life.

§ 5. They are faithfully to observe the period of annual retreat.

SOURCES: § 1: *CD* 33; *PC* 2, 5, 6; *PO* 18; *RC* 5; *VS* V; *ET* 42, 43, 45; *MR* 16, 24; *LMR* II: 1
§ 2: cc. 125,2°, 595 § 1,2° et § 2, 610 § 2; *PC* 6; *PO* 18; *ET* 47, 48; *MF* 771; *LMR* II: 9
§ 3: cc. 125,2°, 595 § 1,2°, 610 §§ 1 et 3; *PC* 6; *OT* 8; *DV* 25; *PO* 18; *ES* II: 21; SCR Rescr., 17 aug. 1967, 1; *VS* II; *ET* 42, 43, 45; *MR* 24; *LMR* II: 8, 12
§ 4: c. 125,2°; *LG* 65; *OT* 8; Paulus PP. VI, Exhort. Ap. Signum magnum, 13 maii 1967, II (*AAS* 59 [1967] 471); *ET* 56, Paulus PP. VI, Exhort. Ap. Marialis cultus, 2 feb. 1974, 21, 49 (*AAS* 66 [1974] 132–133, 158–159); *LMR* II: 13
§ 5: cc. 126, 595 § 1,1°; *PO* 18; *ET* 35

CROSS REFERENCES: cc. 246 § 3, 276 § 2, 3° et 5°, 608, 912, 915, 1331–1332, 1186

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

The canon, divided into five paragraphs, proposes the basic and indispensable spiritual means to live and grow in the following of Christ.

In them lies an inexhaustible source by which is illuminated the *reason* of the response to the vocation of consecrated life, and through them is reached the necessary light and force for the road to perfection, which is certainly arduous and painful, as was the one that Jesus himself traveled: "If any man would come after me, let him deny himself and take up his cross and follow me" (Mt 16:24; Mk 8:34; Lk 9:23). Only in this way will be made clear the reality of His word when He announced the lightness of his burden and the gentleness of his yoke (Mt 11:30).

It is the unfathomable logic of opposites, which challenges the perversity of human reasoning and that is resolved in the splendor of his love and his mercy.

In the canon, the ascetic-legislative purpose is stated in the following five sections.

1. A sage of ancient times affirmed: "the value of life is proportional to the degree of contemplation a person experiences." From this angle, for the religious, contemplation is the vertex of the consecrated state; in this way, it becomes a vital question, the respiration into two lungs that makes dynamic his gift to God and to his brothers. It is a submersion in the mystery of God, who is Truth and Love; it is an intimate sharing with Him, by making one's self a "consort of the divine nature" to the point of being able to say with Paul: "it is no longer I who live, but Christ who lives in me" (Gal 2:20).

Therefore, the canon rightfully proposes it as the "first and principal duty" of the religious. Lived thus, contemplation becomes a "constant union with God in prayer"; therefore, contemplation must consist not only in saying prayers, but in "becoming prayer." I would say more still: it is no longer a matter of being a religious who prays, but of being a religious-prayer.

The choice of religious life implies that every religious "must be" a contemplative. Likewise, every religious institute, whatever its distinguishing charism, must be contemplative. For this reason the *CIC* has

wisely eliminated typological classification into contemplative and non-contemplative institutes.

2. To nourish and strengthen consecrated life more and more intensely, the Eucharist—the great mystery of the love of Christ for his spouse, the Church—is fundamental and irreplaceable.

The Eucharist, which is the heart of the Church, must be so in an exclusive and very powerful way for the religious, through participation in the celebration of the Eucharist, the receiving of the Body and adoration of his presence in the sacred Host.

The constitutions—regarding general considerations—and the regulations—regarding specific determinations—must foresee and establish the moments in which these acts can be accomplished communally, leaving room at the same time for the private initiative of the religious, according always to his work and mission.

Evident in this vision is the close interdependence between the proposed regulations of § 2 and c. 608, which requires the presence in every religious house of at least one oratory "in which the Eucharist is celebrated and reserved, so that it may truly be the center of the community." It is significant that the chapter dedicated to the establishment and suppression of religious houses is opened with this norm.

Note that the canon, even though it desires the three moments of Eucharistic life to be lived "each day," does not make it a strict juridical obligation, for it says "to the extent possible"; this is especially applied to communion.

Regarding this purpose, one must keep in mind no one, not even a religious, is obligated to receive communion. Freedom of conscience is at work in relation to such a sublime act; this freedom must be absolutely respected.[1]

Likewise, access to 'holy communion' cannot be prohibited (c. 912), except pursuant to c. 915, in relation to cc. 1331 and 1332.This canon excludes from access the excommunicated, those under interdict after a constitutive or declarative decision, and those "who obstinately continue in a manifestly grave sin."

Similarly, in accordance with the Instruction *Eucharisticum Mysterium* of the Sacred Congregation for Rites, and the Declaration *In celebratione missae* of the *Sacred Congregation for Divine Worship*, of

1. Cf. SCDS, Instr. "Reservata Postquam," December 8, 1938, in X. OCHOA, *Leges Ecclesiae post Codicem Juris Canonici editae* (Rome 1966), vol. 1, no. 1458, pp. 1904–1907 (not published in *AAS*).

August 7, 1972, no. 3,[2] a religious priest cannot be forced to celebrate Mass or prohibited from celebrating it privately.

3. To acquire the state of contemplation, the first and principal effort must be directed at stabilizing the intimate relationship of communion with Christ present in the Holy Eucharist. This relationship languishes, and ultimately becomes sterile, if the religious does not find necessary assistance or the means to maintain and encourage it.

In § 3, the canon specifically describes some means (reading of Sacred Scripture, mental prayer, worthy celebration of the liturgy of hours), and others in general terms ("other exercises of piety").

The "reading of sacred Scripture" is in itself a force of spiritual elevation, since it is the word of God, which is substantiated in the "Word Incarnate." It must have the character that the *lectio divina* has according to the originating monastic tradition; namely, it is initially reading and, progressively, it becomes reflection, meditation, assimilation, and mystical elevation, until it becomes contemplation. The expression "they are to devote themselves" (in Latin "*vacent*") has in its context this richness of meaning and potentiality.

"Meditation," which is also an element of *lectio divina*, requires "separation" from everything that is external in order to be concentrated inside of one's self, thus establishing a direct contact with the Spirit that speaks in silence.

The constitutions must fix the ways and time of fulfilling this, especially communally. If the activities of the apostolate or other commitments related to the action of the charism of the institute do not allow uniformity of practice, they can and must require it being carried out individually.

"Celebration of the liturgy of hours" is the ecclesial prayer *par excellence*; it is the same Church and thus it is Christ himself who prays with us and in us. This justifies the importance attributed to this prayer; it must be done "in accordance with the provisions of their own law," excepting always the obligation for clerics, beginning with the diaconate, pursuant to c. 276 § 2, 3°. Based on the provisions of the canon, the constitutions may impose the obligation of celebration even on lay faithful, whether in common or in private, in whole or in part. In this last case, the privilege of the liturgy of Lauds or Vespers should be granted.

Regarding "other exercises of piety" recommended by the canon, it is necessary to keep in mind the lifestyle, charism, and spirituality of each institute, which will order and regulate those exercises through the constitutions. Regarding practices of piety and worship, in tune with the ecclesial tradition, there must be kept in mind the *Via Crucis*, the novenas of

2. Cf., respectively, *AAS* 59 (1967), pp. 565–566 and 64 (1972), pp. 561–563 (also in *EV* 2, nos. 1293–1367, pp. 1084–1153 and 4, nos. 1742–1748, pp. 1102–1105, respectively).

Christmas, the Holy Spirit at Pentecost, the Immaculate Conception, and other exercises of piety of special importance in the local Church where the religious house is located.

4. The mystery of Mary, Mother of Christ and Our Mother, participates intimately with and inseparably from the mystery of Christ. The history of our salvation is illuminated and unfolds in the projection of God the Father over Mary.

Logically, the following of Christ is supported also for the religious by the following of Mary, a sublime being, the most docile before the Word of Christ, her Son, and the most generous in the offering of herself, consecrated by the betrothal love of the Holy Spirit. With her, the road to perfection that the religious must travel will be quicker and more sure, for she is the "example and protectress of all consecrated life."

In the context of the different assistance that the canon proposes, the recommendation of a "special devotion" of filial love and dedication to the Virgin Mother of God reaches the nerve of spirituality in religious life.

In all religious institutes, marian devotion assumes a special characteristic and constitutes a precious patrimony. The canon proposes praying the rosary—it does not say that it is obligatory daily—in accordance with classical ecclesial traditions. This specific mention is meaningful, keeping in mind certain current positions against the praying of the rosary.

Reflection on this section—very incisive both in its content and technically—should be developed in light of *Presbyterorum Ordinis* 18 and cc. 246 § 3, 276 § 2,5°, and 1186.

5. The provision, concise and imperative, of observing "faithfully the period of annual spiritual retreat" is the seal of verification of the spiritual road that a religious effectively travels. It is a species of "moral stocktaking," which is indispensable periodically if disagreeable surprises are not wanted, such as having worked in vain.

The canon states the principle in a specific way; the constitutions are called, with juridical duty, to specify the ways, types of retreat, and duration, keeping in mind the ancientpractice: five days, six, eight..., without excluding the so-called Ignatian month.

In this context, there must also be included other diverse forms of retreats: monthly retreat, spiritual days, solitary days, personal vigils or communal prayer vigils—free or required—of long or short duration. Also these forms have the same purpose: in silence, in solitude, to enter into one's self and "to dialogue" with God and with one's own conscience.

664 **In animi erga Deum conversione insistant religiosi, conscientiam etiam cotidie examinent et ad paenitentiae sacramentum frequenter accedant.**

Religious are earnestly to strive for the conversion of soul to God. They are to examine their consciences daily and to approach the sacrament of penance frequently.

SOURCES: cc. 125,1°, 595 § 1,3°; *PO* 18; *Paen* IIIc; SCRSI Decr. *Dum canonicarum legum*, 8 dec. 1970, 3 (*AAS* 63 [1971] 318); *LMR* II: 10

CROSS REFERENCES: c. 630

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

Well thought-out, the canon is a *summa* of the prior canon. In effect, the first part of the canon encompasses—in the expression "conversion of the soul to God"—all the means of a spiritual character mentioned in c. 663. The second part, in turn, particularizes the instrument of verification of one's own road to perfection.

The conversion of the soul to God has as its foundation the very Word of Jesus, when he announced that the kingdom of God is already in our midst and it is necessary to "repent, and believe in the Gospel" (Mk 1:15).

"To convert one's self"—understood in its original scriptural-theological meaning—does not come down to a specific moment in life, to the act of passing from one way of conduct to another, but it is about the stability of orientation, the constant disposition to understanding and to will a way whose nourishment is to do the will of the Father in heaven. Thus, *conversion* becomes the landing strip from which to take off, leaving behind the mere "exercise of piety" and heading towards "contemplation," which transforms consecrated life into living "in heaven" (Phil 3:20).

Daily examination of conscience and frequent sacramental confession are like "bringing up to date" the "book" of religious life, in which the intensity and docility of the response to the vocational gift are verified and registered.

They are converted in this way into a rigorous instrument of ascetic practice that puts into practice, annual verification. In specific practice

they function as a compass on which the orientation of the route is stably fixed so as to bring about the "heady 'conversion of the soul to God'."

The moral-juridical obligation of frequent sacramental confession is expressed in general terms—"with frequency," says the canon; all in all, it rests on the sensitivity and gentleness of the conscience of the religious, for the specific provision for weekly confession has been eliminated (cf. c. 595 § 1, 3° *CIC*/1917), which had later become biweekly.[1] The present regulation seeks to protect freedom of conscience, even by requiring a regular frequency, whose criterion of reference continues being undoubtedly the periodicity of which we spoke a few lines ago. Keeping firm the disposition of c. 630, which obliges superiors to provide suitably in this delicate subject, the constitutions can establish the frequency; nevertheless, such times must always have a directive character. Superiors may also impose the obligation of presenting one's self before a confessor to ask his blessing. Respect for freedom of conscience must prevail at any price.

1. Cf. SCRSI, *Dum canonicarum legum*, December 8, 1970, in *AAS* 63 (1971), pp. 318–319.

665 **§ 1. Religiosi in propria domo religiosa habitent vitam communem servantes, nec ab ea discedant nisi de licentia sui Superioris. Si autem agatur de diuturna a domo absentia, Superior maior, de consensu sui consilii atque iusta de causa, sodali concedere potest ut extra domum instituti degere possit, non tamen ultra annum, nisi causa infirmitatis curandae, ratione studiorum aut apostolatus exercendi nomine instituti.**

§ 2. Sodalis, qui e domo religiosa illegitime abest cum animo sese subducendi a potestate Superiorum, sollicite ab eisdem quaeratur et adiuvetur ut redeat et in sua vocatione perseveret.

§ 1. Religious are to reside in their own religious house and observe the common life and they are not to leave it, except with the permission of the Superior. For a lengthy absence from the religious house, the major Superior, for a just reason, and with the consent of his or her council, can authorise a member to live outside a house of the institute; such an absence is not to exceed one year, unless it be for reasons of health, studies or an apostolate to be exercised in the name of the institute.

§ 2. Members who unlawfully absent themselves from a religious house with the intention of withdrawing from the authority of Superiors, are to be carefully sought out and helped to return and to persevere in their vocation.

SOURCES: § 1: cc. 594 § 1, 606; *CAd* 15; *PC* 15; SCR Decr. *Religionum laicalium*, 31 maii 1966, 4 (*AAS* 59 [1967] 362); *ES* II: 25
§ 2: cc. 616 § 1, 644, 645, 2385, 2386, 2389

CROSS REFERENCES: cc. 90, 127 § 2, 1°, 202, 607–608, 620, 686–693, 696, 702 § 2, 1341, 1371, 2°

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

To correctly interpret and apply this canon, cc. 607 and 608 are basic, since they regulate, respectively, the organic structure of the religious institute and the lawful constitution of the religious house where the community lives and works.

1. Since common life is an essential element, the obligation for religious to reside in their "own" community is a condition appropriate, natural, and inherent to their incorporation into the institute. It is called their "own" house since a religious is placed in it by the regulatory authority of the competent superior. Obligatory residence cannot be satisfied by merely living together. It is expressed in the communion of aspirations and works, thus realizing "fraternal life" (c. 607 § 2), sung by the psalmist (Ps 132) and made happy by the constant presence of the Divine Teacher, who has promised it when two or three are gathered in his Name (Mt 18:20).

Keeping in mind the multiplicity and variety of forms of the apostolate—which frantic modern life imposes even on the organization of religious institutes—it is evident that the obligation of residency should not be made absolute. Otherwise, it would become an irrational vector of inhibition for activities. On the contrary, it must be applied with flexibility, intelligence, and prudence, so that it becomes a fertile instrument of goodness for the religious, the religious community, and the ecclesiastical and civil communities. The possibility of absences—which are skillfully regulated by the grant of permission by the superior, who will specify the duration, place, and manner—must be assessed from this perspective.

When the case occurs of a religious being absent from his own house by living almost permanently in another house of the same institute, it seems that the norm is not being observed. Among other reasons is the exercise of the pertinent rights and obligations, which thus become uncomfortable and impractical for the religious in several aspects and for his own community. If valid reasons exist that require or impose this "anomalous" situation, it seems opportune for the superior—or the superiors, if there is concurrence in jurisdictions—to transfer him so that the house in which he is living becomes his "own."

For a "prolonged" absence, a specific rule is foreseen. The canon does not specify how long an absence is considered "prolonged," but it fixes a maximum time for such permission. The major superior is the competent superior, a concept that, unless otherwise provided by the proper law, comprehends all the categories of c. 620.

It is the task of the constitutions to specify the meaning of a "prolonged" absence and to establish the local superior's powers on this subject, so that conflicts of competence are avoided. From this point of view, the meaning of "prolonged absence" is very relative and elastic in the different constitutions; nevertheless, I understand that it cannot be a week or a month. Keeping in mind the requirements for granting permission—which we will discuss shortly—as well as that the time has doubled in the new regulations in relation to the repealed regulations (cf. c. 606 § 2 *CIC/*1917), and the tempering of the motivating cause—no longer does one say "*gravi et iusta de causa,*" but "*iusta de causa*"—it can be maintained that a prolonged absence lasts at least a few months.

The canon establishes that the major superior, according to the following conditions (which are required for a valid act), can grant a prolonged absence:

a) consent of his council, in whose voting the superior may not take part (c. 127 § 2,1° and *Responsum* of the PCILT);[1]

b) a petition made by the interested religious in which just cause should be clearly made out (c. 90);

c) the absence must not exceed a year, computed pursuant to the norm of law (c. 202). Granting more than a year is reserved to the Holy See. In this case, we are getting close to the institution of exclaustration, regulated by cc. 686ff. (see commentary). During the absence, the religious continues to be bound to his own institution for all purposes, both in regard to the exercise of rights and the fulfillment of obligations.

In the case of an absence "for reasons of health, studies or an apostolate to be exercised in the name of the institute"—this last case must be carefully weighed—if the consent of the council is obtained, the absence can be more than a year, suiting it to whatever the situation may be, just cause being inherent in the act itself.

These requirements must be met for granting a prolonged absence. Denying permission remains exclusively within the conscience and prudence of the major superior, if he weighs and considers the reason insufficient or unjust. Likewise, he must refuse permission if the council expresses a negative opinion.

A prolonged absence requested and granted for discontinuous periods may be considered, as long as previously mentioned requirements are respected. However, such a concession may create complications and artifices in its realization: computation of time, uninterrupted validity of the just cause, upsetting the proper house, etc.

Regarding the innovations introduced by the current legislation, it is necessary to mention the Rescript of the.Secretariat of State, *Cum admotae*[2] and theDecree of the Sacred Congregation for Religious and Secular Insitutes, *Religionum laicalium,*[3] which repealed the cited canon of the *CIC*/1917.

2. An act of a religious who is absent from his own house contrary to the above-commented requirements, "with the intention of withdrawing from the authority of superiors," in an attempt to "regain" his own freedom, is undoubtedly an act of a religious in crisis, unless it is a matter of a person who is the victim of psychological or hysterical disturbances.

1. Cf. *AAS* 77 (1985), p. 771.
2. November 6, 1964, *AAS* 59 (1967), pp. 374–378.
3. May 31, 1967, in *EV* II, nos. 335–349, pp. 366–371.

Whatever the reasons, it is something that we cannot treat here; for the rest, they are easily intuited and even evident. Among others, the lack or tepidness of a constant dialogue with the Holy Spirit in contemplation, prayer, and continuous self-verification stands out. In any case, such an act is an inappropriate way to resolve a crisis.

Faced with this situation, the canon expresses the intense force of pastoral care and paternal solicitude, when it provides that "they are to be carefully sought out and helped to return and to persevere in their vocation" by their superiors. It is the evangelical yearning of the good shepherd that searches for the stray sheep and the intense anguish of a father who awaits the return of his prodigal son (Lk 15:1–32). In this post-conciliar climate, in which the current legislation is encouraging, is understood the repeal of the figure of the *apostate* and *fugitive* religious and the corresponding penalties provided in cc. 644, 645, and 2385 of the *CIC*/1917.

So that the religious rediscovers the beauty and richness of the gift of his own vocation, besides the mentioned action, strenuous means can and should be taken, in accordance with the criterion provided by c. 1341—although in this canon other juridical figures were envisioned: fraternal correction, rebuke, and finally, a penalty, such as that provided by c. 1371, 2°.

If this *rescue* effort is not successful and the absence stubbornly persists beyond six months, expulsion from the institute can be commenced pursuant to c. 696, which explicitly includes an unlawful absence of more than six months among the "grave, external, imputable, and juridically proven" causes for expulsion. Another possibility is to commence—after having suggested voluntary exclaustration—imposed exclaustration (cf. c. 686 §§ 1 and 3) since unlawful absence, as we have described above, is one of the grave causes that permits this kind of decision.

In both cases, the clause—mentioned in this canon and in c. 702 § 2—of preserving, and therefore of observing, equity and charity, is in effect.

666 **In usu mediorum communicationis socialis servetur necessaria discretio atque vitentur quae sunt vocationi propriae nociva et castitati personae consecratae periculosa.**

In using the means of social communication, a necessary discretion is to be observed. Members are to avoid whatever is harmful to their vocation and dangerous to the chastity of a consecrated person.

SOURCES: SCS *Notif.*, 10 iul. 1957; SCR Litt. circ., 6 aug. 1957; *IM* 9, 10; SCS Instr., 15 iul. 1964; *PC* 12; *ES* I: 25 § 2a, b; PCSCM Instr. *Communio et progressio*, 21 maii 1971, 64–70 (*AAS* 63 [1971] 617–620); *ET* 46; *LMR* II: 14

CROSS REFERENCES: cc. 598 § 1, 607, 662–664, 822–832

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

This regulation is so clear that any commentary could be easily superfluous. Nevertheless, some thoughts may be of use.

The expression "means of communication" includes any "instrument" that places the religious in contact with the external world, such as books, newspapers, magazines, telephone, radio, and audiovisual media. The society of our times, frenetic and materialistic, lives with and by means of social communication; thus it has been said with penetrating insight that our world has become a "global village."

Conscious of the extraordinary importance of *mass media,* Vatican Council II devoted the .Decree *Inter Mirifica* to it. This Decree, in its introduction, exalts these "marvelous technical inventions," and acknowledged, "if these media are properly used they can be of considerable benefit to mankind" (*IM* 2).

The *CIC* is thematically concerned with mass media in book III ("The Teaching Office of the Church"), title IV ("The Means of Social Communication and books in Particular"), cc. 822–832.

The interventions of the Magisterium have taken notice of the growing technical perfection of these means of communication, and have reaffirmed their irreplaceable function "of easy communication of all kinds of news, of ideas and orientations," such that they "can reach and influence

not merely single individuals but the very masses and even the whole of human society" (*IM* 1).

The objective acknowledgment of the prestige and value of *mass media* cannot make us close our eyes to the incalculable moral, spiritual, educational, and social damage that they can cause: "[the Church] grieves with a mother's sorrow at the harm all too often inflicted on society by their misuse" (*IM* 2).

The motherly grief of the Church, stimulated by this extremely delicate set of problems is more vigilant and stronger for the religious; it is a matter of ensuring that the precious treasure of the consecrated life in the following of Christ—expressed, according to the different manners of the proper law, by separation from the world (cc. 598 § 1 and 607)—does not go up in smoke, whether in the life of the individual religious or in the community itself.

Nevertheless, individual religious and religious communities must use the means of social communication because, although they are not *of* the world, they live *in* the world. Thus, the canon, insists that they be used with extreme caution and prudence: "a necessary discretion is to be observed." It is necessary to avoid their entrance into the most intimate corners of the religious life of the individual or community to constitute habitual company from morning till night. A member should not be permitted many radios and televisions, especially if they are for personal use in his own cell, nor should these things become the meeting point for the community, suffocating and extinguishing the colloquy of the fraternal life. Otherwise, the religious *status* is ruined because then, not only is one *in* the world, one becomes completely *of* the world. The *habitus* of consecrated life will fall by the wayside and all the means of sanctification that the immediately prior canons propose will become useless (see cc. 662–664 and their commentaries).

Particularly severe vigilance must be maintained regarding use of the television. Everyone is aware—at least from the debates and controversies found in the press—of the extremely vulgar degradation to which television can sink. In light of this deleterious reality, the warning of the *CIC* must be rigorously interpreted and applied, when it provides that "members are to avoid whatever is harmful to their vocation and dangerous to the chastity of a consecrated person."

The best way to conclude these thoughts is by citing the paternal call of John Paul II, directed to all men of good will, but more important to a religious because he is more in jeopardy. Commenting on the Apostles' request of Jesus—"Lord, teach us to pray" (Lk 11:1), which he considers "one of the deepest needs of the human heart," he affirms: "To tell the truth, today's world does not make much room for that need. The hectic pace of daily activity, combined with the noisy and often frivolous inva-

siveness of the means of communication, is certainly not something conducive to the interior recollection required for prayer."[1]

So that the "spirit of prayer" is not extinguished, it is necessary to meditate on and welcome the juridical mandate of the canon, given life by the pastoral solicitude of the Pontiff.

1. Cf. *L'Osservatore Romano*, September 16, 1992, p. 1.

667 **§ 1. In omnibus domibus clausura indoli et missioni instituti accommodata servetur secundum determinationes proprii iuris, aliqua parte domus religiosae solis sodalibus semper reservata.**

§ 2. Strictior disciplina clausurae in monasteriis ad vitam contemplativam ordinatis servanda est.

§ 3. Monasteria monialium, quae integre ad vitam contemplativam ordinantur, clausuram papalem, iuxta normas scilicet ab Apostolica Sede datas, observare debent. Cetera monialium monasteria clausuram propriae indoli accommodatam et in constitutionibus definitam servent.

§ 4. Episcopus dioecesanus facultatem habet ingrediendi, iusta de causa, intra clausuram monasteriorum monialium, quae sita sunt in sua dioecesi, atque permittendi, gravi de causa et assentiente Antistita, ut alii in clausuram admittantur, ac moniales ex ipsa egrediantur ad tempus vere necessarium.

§ 1. In accordance with the institute's own law, there is to be in all houses an enclosure appropriate to the character and mission of the institute. Some part of the house is always to be reserved to the members alone.

§ 2. A stricter discipline of enclosure is to be observed in monasteries which are devoted to the contemplative life.

§ 3. Monasteries of nuns who are wholly devoted to the contemplative life must observe Papal enclosure, that is, in accordance with the norms given by the Apostolic See. Other monasteries of nuns are to observe an enclosure which is appropriate to their nature and is defined in the constitutions.

§ 4. The diocesan bishop has the faculty of entering, for a just reason, the enclosure of nuns, whose monasteries are situated in his diocese. For a grave reason and with the assent of the Abbess, he can permit others to be admitted to the enclosure and permit the nuns to leave the enclosure for whatever time is necessary.

SOURCES: § 1: c. 604 §§ 1 et 2; SCR Rescr., 17 aug. 1967, 3; *ET* 46
§ 2: cc. 597–599; *PC* 16; *ES* II: 30; *VS* VII: 1, 2
§ 3: cc. 597 § 1, 600–603; CodCom Resp. III, 1 mar. 1921 (*AAS* 13 [1921] 177); SCR Instr. *Nuper edito*, 6 feb. 1924 (*AAS* 16 [1924] 96–101); SCR Instr. *Inter cetera*, 25 mar. 1956 (*AAS* 48 [1956] 512–526); SpC IV; SCR Instr. *Inter praeclara*, 23 nov.

1950, I–XVI (*AAS* 43 [1951] 37–41); *PC* 7, 16; *ES* II: 30–32; *VS* VII: 1–17
§ 4: cc. 600,1° et 4°, 601; *PM* 34; SCRSI Decl., 2 ian. 1970

CROSS REFERENCES: cc. 6 § 1, 2° et 3°, 17, 90, 127, 220, 607 § 3

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

1. The canon regulates in four paragraphs the institution of cloister, an ancient tradition. Since its content is essential, cloister is required for every coexistence, beginning with familiar coexistence. It is framed within the fundamental right to *privacy*, recognized nowadays by the current legislation of c. 220 not only for individuals, but also for communities and/or coexistences as such and, therefore, in relation to their own beings and to their work in the context of their own living accommodations and in the exterior.

In the religious houses, cloister—understood as the prohibition for religious of going outside the house and the entrance of strangers into the house—assumes the value of a characteristic element of consecrated life, on application of c. 607 § 3, which situates it as a fundamental element of separation from the world. On the other hand, it must be pointed out that the present legislation—by welcoming the conciliar *aggionamento* through a diligent effort of revision—has modeled the institution of cloister in a manner more flexible and suitable to the requirement of today's social and apostolic life. In the new legislation, the initiative of the proper law prevails, which states criteria and modalities according to the spirit and ends of the religious institute. In this way, many complicated and cumbersome aspects have disappeared, as well as the penalties established by cc. 597 and 2342 of the *CIC*/1917.[1]

2. Paragraph 1 establishes the principle of necessity for cloister in every religious house; this cloister is classified by doctrine as common and includes a dual figure: general cloister and special cloister. General cloister must be "adapted to the character and mission of the institute"; consequently, it is the task of the constitutions to relegate it to the members and to specify the contexts and modalities. This does not exclude the possibility of access and presence, in certain environments or areas of the religious house, of persons of different sex, by adopting wise and rigorous precautions.

1. For a historical investigation on the evolution of the prior legislation, one should take the following documents into consideraton: Ap. Const. *SPC*; Decr. *PC* 16; mp *ES*, II, 30–32; Decl. *Clausuram papalem*, in *AAS* 62 (1970), pp. 548–549; Instr. *VS*. The normative criteria of the Instr. *Verbi Sponsa* of May 13, 1999 now must also be taken into account.

The common particular cloister specifically imposes that "some part of the house is always to be reserved to the members alone." The rationale for the norm is evident: to offer the religious the silence, solitude, and the indispensable withdrawal to be introduced into the dynamic of his own life of contemplation, which makes possible an efficacious and exterior apostolic act.

3. By the context of the canon, it is evident that § 2 refers to monasteries of contemplative life for men. For these, the norm logically envisions that there be established and observed a stricter cloister (*strictior*), both regarding exit from the house by the religious and entrance of third persons into the house or to the delimitation of accessible environments free from cloister. The specific regulation is entrusted to the proper law and must be made in conformance with the spirit of the current canonical legislation, which has become more reasonable and respectful of the dignity of the human person. Finally, since there are monasteries devoted strictly and entirely to contemplative life, and monasteries that allow a certain external activity of apostolate, it is obvious that the regulation of the discipline of cloister must correspond to the kind of life proper to each monastery.

4. Paragraph 3 encompasses two particularly delicate juridical figures, which justifies the controversial wording of the norm: strictly contemplative monasteries for women, and those which combine contemplation with action.

a) Regarding the first category, this paragraph preserves the term "*papal* enclosure" (emphasis added) and its content, as stipulated by the Holy See. When the Code was promulgated, the Instruction *Venite seorsum* was in force. The indications of the Instruction *Verbi Sponsa* of May 13, 1999, however, should currently be followed with respect to papal enclosure.

b) Referring to the second classification, a more rigorous discipline of cloister must be invoked whose ulterior determination is entrusted by the canonical norm—very wisely—to the constitutions; a special and prudent directive is indicated: the *nature* itself of the monastery.

5. The normative content of § 4 practically repeats the innovative provisions of *Pastorale Munus* 34, which repealed cc. 600 and 601 of the *CIC*/1917 and attributed special faculties to the diocesan bishop; these faculties are regulated from a dual perspective: personal and in relation to third parties.

Referring to his person, the bishop has the faculty of entering the monasteries for women situated in his diocese when just cause requires, the assessment of which is clearly left to his own good judgment.

Referring to another kind of faculty, he may *permit* others—men or women, cleric, religious or lay—to be admitted into the cloister, and the

nuns to leave, on the condition that there be a grave cause as well as a just cause—every ecclesiastical act must always have the support of a rational motive (cf. c. 90)—and with the consent of the abbess of the monastery. It is clear, therefore, that dispensation, which suspends the discipline of cloister, is lawful when these three elements are present: authorization of the diocesan bishop, consent of the abbess, and grave and just cause. Otherwise, entrance and exit are unlawful and violate an especially protected law. On the other hand, remaining outside cloister is permitted for nuns "for whatever time is necessary," which must be considered with reasonable flexibility.

Regarding the need to have the consent of the abbess, it must be stated that this is not required in *Pastorale Munus*; it was introduced into the final draft of the canon. It also should be noted that the requirement of consent must be interpreted and applied in accordance with c. 127.

The following question is posed here: who in fact grants permission to enter or leave? In light of c. 17, the logical interpretation of the legislative text leads one to affirm that it is the bishop, of whom the text says that "[he] has the faculty ...of permitting ..."; The other two requirements, especially consent, have to be considered as *hindering* the granting of permission. On the other hand—here the shadow of *papal* cloister is projected—he is the ex-officio guardian of cloister. The consent of the abbess has internal effects and governs the movement *ab intra* and *extra* in the execution of permission.

Everyone, of every social category and class, ecclesiastical or civil, is obliged to observe this norm: therefore, the privileges that c. 600, 3° of the *CIC*/1917 recognized for Cardinals and Heads of State with their entourage have disappeared.

The discourse is totally different when it is a matter of entering and leaving made necessary by demands of the physical and spiritual lives of the nuns, maintenance to be done on the buildings, or technical services. It is not necessary, nor would it be justified in practice, to specify instance by instance the above-described elements; they are intrinsic to the occurrence of such needs and the intervention of the superior of the monastery is more than sufficient who will follow—personally or though another person—the progress of the activities. Thus, the following conduct is lawful without of the mentioned formalities: entrance of a confessor, health personnel (doctors and other personnel), technicians, workmen and the like. Nuns may leave for medical appointments, hospital stays, civil voting, and similar matters. This interpretation is based on the very significant silence of the last legislator, in contrast to what occurred in the previous legislation, which explicitly took into consideration those cases mentioned in c. 600, 4° *CIC*/1917. In any case, as stated above, one should now recur to the norms regarding papal enclosure as established by the. Instruction *Verbi Sponsa*.

668 **§ 1. Sodales ante primam professionem suorum bonorum administrationem cedant cui maluerint et, nisi constitutiones aliud ferant, de eorum usu et usufructu libere disponant. Testamentum autem, quod etiam in iure civili sit validum, saltem ante professionem perpetuam condant.**

§ 2. Ad has dispositiones iusta de causa mutandas et ad quemlibet actum ponendum circa bona temporalia, licentia Superioris competentis ad normam iuris proprii indigent.

§ 3. Quidquid religiosus propria acquirit industria vel ratione instituti, acquirit instituto. Quae e ratione pensionis, subventionis vel assecurationis quoquo modo obveniunt, instituto acquiruntur, nisi aliud iure proprio statuatur.

§ 4. Qui ex instituti natura plene bonis suis renuntiare debet, illam renuntiationem, forma, quantum fieri potest, etiam iure civili valida, ante professionem perpetuam faciat a die emissae professionis valituram. Idem faciat professus a votis perpetuis, qui ad normam iuris proprii bonis suis pro parte vel totaliter de licentia supremi Moderatoris renuntiare velit.

§ 5. Professus, qui ob instituti naturam plene bonis suis renuntiaverit, capacitatem acquirendi et possidendi amittit, ideoque actus voto paupertatis contrarios invalide ponit. Quae autem ei post renuntiationem obveniunt, instituto cedunt ad normam iuris proprii.

§ 1. Before their first profession, members are to cede the administration of their goods to whomsoever they wish and, unless the constitutions provide otherwise, they are freely to make dispositions concerning the use and enjoyment of their goods. At least before perpetual profession they are to make a will which is valid also in civil law.

§ 2. To change these dispositions for a just reason, and to take any action concerning temporal goods, there is required the permission of the Superior who is competent in accordance with the institute's own law.

§ 3. Whatever a religious acquires by personal labour, or on behalf of the institute, belongs to the institute. Whatever comes to a religious in any way through pension, grant or insurance also passes to the institute, unless the institute's own law decrees otherwise.

§ 4. When the nature of an institute requires members to renounce their goods totally, this renunciation is to be made before perpetual profes-

sion and, as far as possible, in a form that is valid also in civil law; it shall come into effect from the day of profession. The same procedure is to be followed by a perpetually professed religious who, in accordance with the norms of the institute's own law and with the permission of the Supreme Moderator, wishes to renounce goods in whole or in part.

§ 5. Professed religious who, because of the nature of their institute, totally renounce their goods, lose the capacity to acquire and possess goods; actions of theirs contrary to the vow of poverty are, therefore, invalid. Whatever they acquire after renunciation belongs to the institute in accordance with the institute's own law.

SOURCES: § 1: cc. 569 §§ 1 et 3, 580 § 1; CodCom Resp. 9, 16 oct. 1919 (*AAS* 11 [1919] 478); SCR Resp., 26 mar. 1957; SCR Resp., 1 mar. 1958; *AIE* 6
§ 2: cc. 580 § 3, 583,2°; *CAd* 17; SCR Decr. *Religionum laicalium*, 31 maii 1966, 6 (*AAS* 59 [1967] 363); SCRSI Decr. *Cum superiores generales*, 27 nov. 1969 (*AAS* 61 [1969] 738–739)
§ 3: cc 580 §§ 1 et 2, 582, 594 § 2; SCR Resp., 16 mar. 1922 (*AAS* 14 [1922] 196–197); *PC* 13; *ES* II: 23; *ET* 21
§ 4: c. 581; *CAd* 16; *ES* II: 24; SCR Decr. *Religionum laicalium*, 31 maii 1966, 6 (*AAS* 59 [1967] 363)
§ 5: cc. 579, 582,1°

CROSS REFERENCES: cc. 600, 653 § 2, 654, 670, 1192 § 2

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

The regulations of this canon, grouped in five paragraphs, depend directly on c. 600, since it traces the specific lines that frame the different ways of observing the vow of poverty in its diverse aspects and practical exigencies.

Although its structure is radically based on the regulations of the *CIC*/1917 (cc. 569, 583, and 594), in the *CIC* they are profoundly modified and formed by the ferment of conciliar ecclesiology and spirituality. This explains the sharp resistance and lively debates during the drafting of the canon, especially in reference to §§ 4 and 5. It was a matter of providing transparent regulation to a delicate subject, since every patrimonial juridical act carried out in the canonical system necessarily projects its reflections—that is, it is relevant in the legal system of the civil jurisdiction in which it occurs. This has only been noticed and expressly mentioned for

the cases envisioned in §§ 1 and 4. Nevertheless, to avoid disagreeable and tiresome controversies, prudence counsels performing all the acts discussed about in the canon with the solemnities established in civil law, so they are simultaneously valid in both systems. Consider, for example, the documents regarding the use and usufruct of the goods mentioned in the first part of § 1.

1. Paragraph 1 contemplates two very different juridical figures. The first is an act *inter vivos*, temporary (disposition of the proceeds of patrimonial goods); the second is an act *mortis causa* (testament); from the technical systematic point of view, logic would have situated them in two paragraphs, as c. 569 *CIC*/1917 had done.

a) In the first part, the novice takes action immediately before taking temporary vows, when he has already been lawfully admitted to religious profession (c. 653 § 2). So that the observance of the vow of poverty effectively reaches its spiritual and material ends, as provided by c. 600, it forms an essential part of its specific structure that the religious separate himself from the goods that he owns, and that he not personally concern himself with their management or their proceeds. Consequently, the canon requires him, before taking vows, to cede the administration of his goods and freely provide for the disposition of their proceeds, by determining their use and usufruct through a document valid in canon and civil law. There is a limitation on the adverb "freely," in the clause "unless the constitutions provide otherwise." The imposition of the alternative could be disrespectful of the freedom of one who has decided to leave everything to become devoted to consecrated life; on the other hand, it could turn out hardly coherent, and would give a bad image of the religious institute, especially if the profits must be turned over to the institute itself.

b) The second part of the paragraph states that a will must be made out and adds the wise provision that it be "valid also in civil law."

It is not obligatory that drafting of the will take place before profession of temporary vows; in any case, it must be made "at least before perpetual profession." The solemnities that must be observed will be those of the place where the document is drafted. This can generally take two forms: holographic or notarial, which in turn can be public or private, save the specific provisions of each juridical system (cf., for example, Italian Civil Code, arts. 601ff).

It is clear that the will has its reason for being in the case that the novice or professed owns personal or real property at that moment; otherwise it does not make any difference and, from the juridical point of view, it has no effect. When, later, he becomes the owner of some property, then will be the time to make a disposition *mortis causa* in conformance with the typology of religious profession and provisions of the common law and those of the institute's own law.

2. The normative content of § 2 is a logical consequence of the provisions of the previous paragraph. In effect, nothing under the sun is immune to change. Unforeseeable and unthinkable situations can always occur. Serious and inescapable reasons, due to the religious himself or to outside factors, can make it morally necessary to modify acts already completed and to require new administrative interventions. The legislator has wisely kept this possibility in mind and allows those modifications, but always inspired by the spirit of poverty. Precisely for this last case, the moral and juridical obligation to obtain the permission of the competent superior according to the norm of the proper law is justified.

Since these two sections are closely tied to each other, to the point that one is derived from the other, from the technical juridical point of view, it is logical to think that the decisions to be made and the acts of administration are regulated by the same criteria that § 1 proposes: freedom unless otherwise stated in the constitutions. Finally, in observance of the norm, the superior, once the existence of just cause is verified—which is expressly required—cannot nor should refuse authorization to proceed according to the exigencies of the case. To deny it under the rationale that it was the result of excessive zeal or precipitous judgment would cause damage to the religious, to third parties, and to the institute.

3. Paragraph 3 is framed within the structural dynamic of the social state. It delineates two figures of religious: the religious in full exercise of his work, and the religious in the "passive class" of situation. The first receives rewards, salaries, or stipends for his work; the second receives pensions, insurance, subsidies for sickness, disabilities, old age, or for any other kind of entitlement. In these cases, the ancient monastic principle rules: "*quidquid monachus acquirit pro monasterio acquirit,*" which is inherent in the nature of the relationship between the religious and the institute that has to be established with profession, the religious has been incorporated into the institute and is an integral part of it; therefore, he has a right to receive from the institute all that refers to his material or spiritual needs (cc. 654 and 670). Similarly, he is obliged to give to the institute the fruit of his labor and undertakings accomplished inside or outside the institute. This is a strict duty of justice.

Regarding the second kind of income, the canon adds: "unless the institute's own law decrees otherwise," that is to say, unless a different disposition is allowed. It does not seem to exclude personal utilization, carried out in different ways, including its consumption and or its accumulation in bank accounts or in private investments. This is a prescription that causes some confusion. Although it deals with a vow of poverty whose systematization must be sufficiently flexible, it can be dangerous, and a source of imbalance in the relational and communal context among the religious themselves. This can easily cause division in the life of the community and even extinguish the spirit of fraternal life. Unfortunately, this is the reality, and it must not be hidden by a hypocritical reserve. The

constitutions must be extremely cautious and wise when establishing norms on this subject.

4. Formally eliminated from the canons regarding consecrated life is the class of "solemn vow"—because of which it is perhaps superfluous to have been mentioned in c. 1192 § 2—it nevertheless appears in the substance of their content in regard to the particular law of some institutes and by reintroducing the regulations of c. 581 *CIC*/1917.

In effect, § 4 takes into consideration the radical renunciation of goods, obligatory or voluntary. Obligatory renunciation is envisioned for religious institutes that require it as a structural element of their condition of life; it must be made before perpetual profession so that it takes effect from the day of taking vows, with an act *inter vivos*, valid for civil purposes if possible ("quantum fieri potest"). Looking at the reality of things, the clause "*quantium fieri potest*" seems unsuitable. The objectively correct thing would have been to require the efficacy of the act in both legal systems, as c. 581 § 2 *CIC*/1917 did with a peremptory and plain formulation.

The same act of total separation and rejection of temporal goods was favorably received by the last legislator, as provided in the second part of the paragraph: the case of voluntary radical renunciation. It can be done as long as it is in the particular law of which the general superior approves, and it is in accord with the formal provisions of the canon and civil law. Renunciation can be extended to all the goods that the religious owns at that time or only to a part of them.

5. With respect to obligatory renunciations, § 5 intervenes with a rigorous statement; a religious loses the capacity to deal with property, that is, he loses the capacity to acquire and to possess, with the consequence that every act contrary to the vow of poverty is invalid.

In this regard, it is indispensable to specify that the nullity of the acts pertains only to the juridical sphere of canon law, for the right to property is among the fundamental rights of the human person and is, as such, inalienable and cannot be renounced. It must be clear that the renunciation desired by the *CIC* in tune with the particular law is directed only at the goods that are presently the property of the religious; it is not a renunciation of the *right* to property. These are two manifestly different juridical figures.

In the context of canon law, the final provision of the paragraph is clearly correct: "whatever they acquire after renunciation belongs to [in Latin *cedunt*] the institute in accordance with the institute's own law." But it is also correct and essential that the religious realize the act of transference of goods to the institute if it is desired that they remain in the name of the institute and that it become the lawful owner.

In contrast, the juridical condition of the religious who freely renounces is different. He does not radically lose the capacity to deal with property; he can radically renounce only a part of his patrimony, retaining title to the other part. Consequently, the acts of acquisition and possession are not invalid, neither for canonical purposes nor for civil purposes. Likewise, goods he subsequently acquires are not attributed to the institute, but they remain in his patrimonial estate, unless he directs otherwise.

This is what can be concluded in light of the letter and spirit of the norm, analyzed in the systematic context of its formulation. Can the constitutions expressly prohibit voluntary radical renunciation of goods? It seems that one can respond affirmatively, especially in institutes that regulate the exercise of the vow of poverty with notable flexibility, so that precarious situations are avoided in the future. The *CIC* allows it, but it does not impose a provision on the constitutions. In any case, times and manners can be prescribed with particular rigor.

669 **§ 1. Religiosi habitum instituti deferant, ad normam iuris proprii confectum, in signum suae consecrationis et in testimonium paupertatis.**

§ 2. Religiosi clerici instituti, quod proprium non habet habitum, vestem clericalem ad normam can. 284 assumant.

§ 1. As a sign of their consecration and as a witness to poverty, religious are to wear the dress of their institute determined in accordance with the institute's own law.

§ 2. Clerical religious of an institute which does not have a special habit are to wear clerical dress in accordance with can. 284.

SOURCES: § 1: c. 596; SCR *Notif.*, 6 feb. 1965; *PC* 17; SCR Rescr., 17 aug. 1967, 2; SCRSI Normae, 8 iun. 1970; *ET* 22; SCRSI *Notif.*, 25 feb. 1972; SCRSI *Notif.*, mar. 1974; SCRSI Resp., 5 dec. 1974; SCRSI *Notif.*, 12 nov. 1976; SCEP Litt. circ., 25 ian. 1977; SCRSI Let., 4 mar. 1977
§ 2: cc. 136 § 1, 188,7°, 2379; SCRSI *Notif.* 25 feb. 1972; SCRSI *Notif.* mar. 1974; SCB Litt. circ., 27 ian. 1976; SCRSI *Notif* 12 nov. 1976

CROSS REFERENCES: c. 284

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

The first and immediate reflection upon reading this canon is of a general character: that every institute can have, but not necessarily must have, its own habit that distinguishes it, together with other signifying elements, from the other institutes.

When the institute has its own habit—whose form, color and characteristic features should be described with precision by the constitutions—pursuant to § 1, its members are obliged to wear it, respecting the different provisions regarding its use (within or without the religious house) given by the institute, by the common law and by the Bishops' conferences, together with lawful local customs.

When the institute does not have its own habit, in virtue of § 2, clerical religious should adopt the clerical habit according to the norm of c. 284, to which the mentioned paragraph explicitly refers. Non-clerical re-

ligious will dress according to the uses and customs of the place where they live, attentive to decorous considerations, dignified but modest.

The habit, in itself and in its social context, assumes a fundamental value; the legislator emphasizes this when he affirms that it is a sign of consecration and a testimony to the poverty of the religious. It is a sign that distinguishes and separates the religious from the environment in which he lives and works, even being within it. It exalts the internal character of the spirit facing the dissipation and bewilderment of the modern world; and announces the eschatological end of religious life, namely, to prepare the coming of the kingdom of Christ.

Unfortunately, the provision of wearing the clerical or religious habit has become quite a critical problem because of the arbitrary concessions, sometimes overly bold, regarding those which the competent authority has already made. Futile reasons and ambiguous justifications, stemming from the secularized context of present society, tend to empty the habit of its intrinsic value. It is an indirect and deplorable way of entering the world again. It is necessary, therefore, to restore it fully to its genuine power as a sign that announces and gives testimony to the following of Christ.

670 Institutum debet sodalibus suppeditare omnia quae ad normam constitutionum necessaria sunt ad suae vocationis finem assequendum.

The institute must supply the members with everything that, in accordance with the constitutions, is necessary to fulfil the purpose of their vocation.

SOURCES: *LG* 43; *PC* 18; *ET* 26

CROSS REFERENCES: cc. 618, 619, 659ff

COMMENTARY

Giuseppe Di Mattia, ofm. Conv.

The *lectura textus* allows two assessments of the canon, clearly antithetical. From a certain perspective, it could be considered a superfluous canon, which regulates subjects inherent to the relationship between the institute and the religious stemming from profession, and which are already made explicit in opportune sectors of the legislation. From another perspective, it is a canon that gathers together, as a *summa*, all the provisions of the regulations regarding consecrated life in this respect, and which is placed here by the logic of the canonical system.

The text of the canon, which should be read from this second perspective, moves—in its concise formulation—within the class of duty-rights, according to the reciprocity between the institute and the religious. To the variety and multiplicity of the duties of the religious in the spiritual and material plane corresponds the right of the institute to require their fulfillment. Likewise, to the duty of the institute to take part in all the spiritual and temporal needs of the religious corresponds the right of the religious to seek—a term that should be taken in its juridical meaning—their fulfillment. This is what is concluded from the text and the normative context of the canon; the content of the *requirements* is evidenced expressly by the expression "supply the members with everything that, in accordance with the constitutions, is necessary to fulfill the purpose of their vocation." Here it urges to specify the limits of the moral and juridical requirements of the religious, sanctioned by two conditions: namely, that the petitions of the religious and their response of the institute conform with the dictates of the constitutions, and as such, directed only and exclusively to the reaching of the end of their vocation. Otherwise, the peti-

tion constitutes something unlawful and inappropriate, and the institute cannot and should not respond affirmatively.

The *CIC* charges the institute with this duty; it is obvious that it should be put into action by the superiors, from the supreme to the local superior, upon whom is placed—personally or collectively—the responsibility of observing the discipline and obtaining the ends of the institute through the joint action of its members.

In spite of the rubric of the chapter's being entitled "The obligations and rights of institutes and of their members," it must be stated that only this canon speaks of a right of the religious; all the others speak of the fulfillment of the duties of the religious in the personal and institutional sphere. Assessed as a *summa,* it is appropriate in the general context of the rubric, and it recapitulates all the rights.

This is not the place to make a list of the rights that the religious holds; reference is made to appropriate sections. By way of example, they can be stated as the right to permanent formation, respect for their own human personality, and fraternal aid in every eventuality of physical or religious life (cc. 659ff, 618 and 619).

671 Religiosus munera et officia extra proprium institutum ne recipiat absque licentia legitimi Superioris.

Religious are not to undertake tasks and offices outside their own institute without the permission of the lawful Superior.

SOURCES: *CD* 35, 2; *ET* 20, 26

CROSS REFERENCES: cc. 145 § 1, 601, 618, 654, 681, 682

COMMENTARY

Giuseppe Di Mattia, ofm. conv.

This canon embodies two fundamental principles of consecrated life: the vow of obedience and the incorporation into the religious institute through the profession of faith (cc. 654 and 601).

Through incorporation, religious dedicate their physical and moral faculties to the institute; they are *members* of the singular body, becoming part of and belonging to it. As such, they must devote all their energy, action, and skills, both intellectual and manual, to and for the benefit of the institute.

Furthermore, through the vow of obedience they forsake their will, handing it over to their lawful superiors. Consequently, by following the example of Christ, obedient even until death, a religious no longer makes free and autonomous decisions. Instead, he depends on those who can use him for institutional and constitutional purposes, and who seek to awaken in him voluntary obedience while respecting the dignity of the human person (c. 618). Thus framed, the canon's character reflects a natural way of living and working inherent in the affairs of a hierarchical institution. Therefore, the religious cannot seek or accept *munera et officia* without the permission of his legitimate superior. One must interpret and apply the terminology of the *CIC* (which we have left in the original Latin in order to specify the reasoning), not only in the technical canonical sense (c. 145 § 1), but also more fully, so that it encompasses any assignment, service, or undertaking, temporary or stable, whether ecclesial or civil (cf. in this sense *PO* 20b). The legitimate superior must grant permission to a religious before he may accept a ministerial obligation for the Church or civil employment, the latter being especially sensitive. Regarding ecclesiastical ministerial duties, note that cc. 681 and 682 govern diocesan activities, which are selected by the bishop and appropriate superior. Whatever a religious assignment or office outside the institute, it may not serve to end

his collaboration with his institute or to weaken his commitment to the consecrated life. This is the main and unwavering condition of granting permission.

On further reflection, one discovers the incalculable value of the requirement and granting of permission: for the religious it is a guaranty that he is doing God's will, manifested by the superiors, "vices Dei gerentes" (c. 601), and that he is furthering the charism of his institute, even while working on the *outside*.

672 **Religiosi adstringuntur praescriptis cann. 277, 285, 286, 287 et 289, et religiosi clerici insuper praescriptis can. 279 § 2; in institutis laicalibus iuris pontificii, licentia de qua in can. 285 § 4, concedi potest a proprio Superiore maiore.**

Religious are bound by the provisions of cann. 277, 285, 286, 287 and 289. Clerical religious are bound by the provisions of can. 279 § 2. In lay institutes of pontifical right, the permission mentioned in can. 285 § 4 can be given by the proper major Superior.

SOURCES: c. 592; SCR Resp. 15 iul. 1919 (*AAS* 11 [1919] 321–323); SCR Litt. circ., 10 feb. 1924; SCR Litt. 29 apr. 1946, SCR Litt. circ., 2 maii 1951; SCR Decr. Militare servitium, 30 iul. 1957 (*AAS* 49 [1957] 871–874); *LMR* I

CROSS REFERENCES: cc. 135 § 2, 277, 279 § 2, 285–287, 289, 599, 607, 660, 661, 666, 667, 669, 1392

COMMENTARY

Giuseppe Di Mattia, ofm. conv.

Clerical life and consecrated life share many similarities. This coincidence—explicitly affirmed in the old legislation (cc. 592 and 614 *CIC*/1917) and effectively implicit in the *CIC*—compelled the legislator to make references in this canon to others that concern clerical life, thus avoiding superfluous repetition. Obviously, the reference imposes the obligation to observe those rules.

To understand this canon fully, one must resort to the commentaries for each of the referenced canons. At this point, however, to present a complete and coherent picture of this canon's normative content, we will start with a general description of the referenced canons.

1. *Law of celibacy* (c. 277)

The reference might appear superfluous, if we take into account c. 599 in relation to c. 607, regarding the vow of chastity. But in fact it is not, for it refers with some theological-ecclesial precision to c. 277 §1, and demands that great caution be taken to avoid improper conduct and even the appearance of impropriety (§ 2). The bishop's decisions in these mat-

ters must be obeyed (§ 3). To the foregoing we add the specific demands of the proper law as set forth in cc. 666, 667, and 669 (see respective commentaries).

2. *Activities not permitted* (c. 285)

This canon provides an ascending scale of excluded activities: those unbecoming of the clerical state, those alien to the clerical state, and those incompatible with the clerical state.

a) The activities unbecoming of the clerical state, stated generally, are strictly prohibited, and it is up to diocesan statutes and proper law to give them particular content, taking into account diverse cultures and social environments.

b) Also, specific legislation should establish which things are alien to the clerical state; alien here does not mean indecorous, or something bad in itself, but rather something that does not fit into the clerical or religious life.

It must be pointed out that the standards here are general principals regarding this material, leaving to the particular legislators (c. 135 § 2)—as we have stated—the competence to particularize the cases encompassed by the two categories, with reference to times and places. In contrast, the old legislation took the trouble to state them specifically in cc. 138 and 139.

c) The directive regarding incompatible activities is different because these activities are good in themselves and can merit dispensation for necessity or urgency.

Incompatible activities explicitly include the assumption of public positions that carry with them the exercise of civil power (i.e., civil legislators and ministers or judges); administration of the goods of the laity that requires the rendering of accounts; giving security interests (including one's own goods) and bills of exchange. The prohibition is not absolute, and the rule anticipates the permission of the ordinary for a just cause. In our case the ordinary is the major, supreme, or provincial superior, as provided by the proper law. Accordingly, the end of c. 672 states that in lay institutes of pontifical right, the major superior may grant permission.

3. *Business and commercial activity* (c. 286)

This activity is prohibited in the strict sense. In every case the rule expressly requires permission of the legitimate ecclesiastical authority; here, it is the diocesan ordinary. Keep in mind the effects that authoriza-

tion might have in society in general. The legitimate ordinary here is the diocesan ordinary. The *CIC* provides a preceptive sanction pursuant to c. 1392 for violations.

4. *Activity in political parties or trade unions* (c. 287)

The clergy and religious are, by virtue of the mission entrusted by Christ through the Church, messengers of peace and harmony based on justice. Accordingly, they are forbidden the above activities for their very nature is to take sides. The competent ecclesiastical authority may permit them, however, when it is necessary to defend the Church or promote the common good.

5. *Military service* (c. 289)

Unless compliance is excused by concordats and agreements regarding mandatory military service, the law of the state must be obeyed. The spirit of the rule suggests (and imposes) the use of the "conscientious objector" deferment where legally available; it is a civil, not military service. It follows that the cleric and religious may not volunteer for military service. Permission of the ordinary or superior also is permitted for just cause.

Likewise, the cleric or religious must seek exemptions to service in jobs or public office that are alien to the clerical or religious state, even though they are mandatory for other citizens. After examining the facts of the case, the ordinary may decide otherwise, and the religious must follow his decision.

6. *Ongoing formation* (c. 279 § 2)

By virtue of cc. 660 and 661, religious must continue their spiritual, doctrinal, and practical education and development.

CAPUT V
De apostolatu institutorum

CHAPTER V
The Apostolate of Institutes

673 **Omnium religiosorum apostolatus primum in eorum vitae consecratae testimonio consistit, quod oratione et paenitentia fovere tenentur.**

The apostolate of all religious consists primarily in the witness of their consecrated life, which they are bound to foster through prayer and penance.

SOURCES: *LG* 42, 44, 46; *CD* 33; *PC* 5, 6; *AG* 11, 12; *MR* 14; *LMR* II: 26

CROSS REFERENCES: cc. 662, 663 § 1,

COMMENTARY

Velasio De Paolis, cs.

1. *The chapter on the apostolate of the institutes*

This chapter is totally new[1] although most of its subject matter, naturally, had been regulated by the prior Code, as can be seen through the

1. Cf. D.J. ANDRÉS, "Relaciones entre obispos y religiosos: análisis y significado," in *Il nuovo Codice di diritto canonico* (Rome 1983), pp. 233–264; J. BEYER, "Ad documentum: 'Notae directivae pro mutuis relationibus inter episcopos et religiosos in Ecclesia' adnotationes," in *Periodica* 68 (1979), pp. 563–611; V. DE PAOLIS, *La vita consacrata nelle Chiesa* (Bologna 1992), p. 331–360; idem, "Il religioso parroco," in *Orientamenti pastorali* 12 (1983), pp. 69–75; idem, "Vita religiosa e parrocchia," in *Vita religiosa e parrocchia* (Rome 1985), pp. 108–125; J. GARCÍA MARTÍN, *Relaciones entre los obispos del lugar y los Superiores religiosos en las misiones* (Rome 1984); G.F. GHIRLANDA, "Relazioni tra istituti religiosi e vescovi diocesani," in *Informationes SCRIS* (1988), pp. 49–89; G.F. GIROTTI, "Gli istituti di vita consacrata. Rapporto tra Vescovi e Religiosi," in *I religiosi e il nuovo Codice di diritto canonico* (Rome 1984), pp. 180–198; A. PINHEIRO, "Bishop-Religious Relationship. The Apostolic subjection of religious to the power of Dicesan Bishop in the exercise of Apostolics activities in the Diocese," in *Commentarium pro Religiosis* 70 (1989), pp. 37–79; 193–222.

relatively few canons cited among the sources and through the conciliar documents (primarily *Lumen gentium*, *Christus Dominus*, and *Perfectae caritatis*) or post-conciliar documents (principally *Ecclesiae sanctae* and the norms of *Mutuae relationes,* issued jointly by the Congregations for Bishops and Religious) that occupy an important place among the sources of the new canons. The newness also reflects the importance of the apostolate of religious in these times, above all in relation to consecrated life. Especially since the Council and when addressing the institutes dedicated to the apostolic life, the apostolate is not considered a supplement or an accessory to religious life as a consequence of the shortage of diocesan clergy, but instead is a natural part of consecrated life. Further, through the apostolate, religious are incorporated into the pastoral life of the diocese. This presents a tricky identity problem for the institutes: on one hand, fidelity to their patrimony and charism, and therefore to the demands of autonomy; and on the other, inclusion into the particular church that obeys the diocesan bishop. It is not a completely new problem (cf. cc. 608 and 630 *CIC*/1917), but today it is especially acute because of the great importance of the apostolate of religious. The matter affects the institutes themselves more than the individual religious. Indeed, the title of the chapter is "The Apostolate of the Institutes" not "of religious."

The Code devotes a full eleven canons to this matter and mentions it in many others to which separate reference should be made. The subject could be divided into two sections: the first generally deals with the apostolate of religious institutes (cc. 673–677) and the second governs the relationship between diocesan Ordinaries and the diocesan clergy and religious (678–683).

Note that the canons specifically refer to religious institutes; therefore, not directly included are the rest of the institutes of the consecrated life or the societies of apostolic life. Nevertheless, keep in mind that c. 738 § 2 also applies cc. 679–683 to societies of apostolic life, with regard to the fact that they are made subject to the diocesan bishop. Moreover, c. 715 § 2 affirms that the members of secular institutes, which are incardinated in their proper institute and are appointed to the governance or particular works of the institute, depend on the bishop in the manner that religious do *(ad instar religiosorum).*

Before ending this brief introduction, note that the material in this chapter presupposes the study of the placement of religious in the Church, their charismatic and institutional nature, their relationship with the universal and particular church, the principle of autonomy, and the hierarchical dependence.

2. *The meaning of the term "apostolate": a note for all the canons of this chapter*

The norm applies to all religious institutes, of whatever kind, and also to those completely dedicated to contemplative life (cf. 674). The word "apostolate" as used in the title of this chapter and canon, has a very broad meaning, perhaps even improperly so. It does not really refer to the active apostolate. In fact, the consecrated life as such does not necessarily require the exercise of an active apostolate. In c. 674, upon addressing the institutes completely devoted to contemplation, the adjective "active" should be inserted to classify the apostolate and distinguish it from the apostolate that is typical of contemplative religious. The canons that follow c. 674 have a distinct terminology and specification scheme. It might be a good idea, then, to include a general introductory note to all canons in this chapter to permit us to be more expeditious in the commentary of each one of them. This way it should not be difficult for someone who gives only a quick read to these eleven canons to see just how varied the meanings of "the apostolate" are.

The very title "The Apostolate of the Institutes" embraces quite different realities. If later we approach the various canons, in the first one (c. 673) "apostolate" means the testimony of the consecrated life of religious. Canon 674 talks about a "hidden apostolic fruitfulness" of the institutes devoted entirely to contemplation. In this same canon this apostolic fruitfulness is distinguished from the "active apostolate." Canon 675 contains a varied range of expressions: "works of the apostolate" "apostolic action" (repeated four times in the same canon), and "apostolic spirit." Canons 678 §§ 1 and 3 and 680 speak again of the works of the apostolate. In this last canon we meet once more "apostolic action." Canon 678 § 2 talks about "an external apostolate." Furthermore, other canons mention the "spiritual and corporal works of mercy" which play a role in the Church's pastoral mission (c. 676); talk about the "mission and works which are proper to their institute" (c. 677 § 1), or "works which the diocesan bishop entrusts to religious" (c. 681 § 1); "the work to be done" (§ 2); "works of religion or charity entrusted to religious, whether these are spiritual or temporal"(c. 683 § 1); and finally, an "ecclesiastical office" entrusted to a religious (682 § 1).

In this brief overview, the following three things are very important and are explained below: (a) the *apostolic dimension* of a life entirely dedicated to God; (b) the *activities and works of the apostolate in the proper sense,* insofar as they are qualified by their inherent nature; and (c) the *remaining tasks and activities,* not inherently apostolic, but that play a role in the meaning of and are in aid of the apostolate.

a) The meaning of *apostolic dimension,* in the sense of the *efficacious apostolate,* is fully present in cc. 673 and 674. Consecrated life, lived with coherence, is worthy of the testimony that certainly bears fruit in the

life of the Church, as well as direct apostolic activity. Likewise, so is the testimony of contemplative souls, treated in c. 674. Strictly speaking, these cases do not involve the apostolate, but point out what is meant by the heart of the apostolate: the intimate union with God in charity. Canon 677 § 2 explicitly affirms this for those dedicated to the active apostolate.

b) Moreover, there is *apostolic activity.* This expression implies that the canons try to classify certain actions as particular in and of themselves, according to their own characteristics. Apostolic activity is that which, by its very nature, transmits the Gospel message; for example, evangelization, preaching, the ministry of the Word in general, and the sacramental ministry. It is the work for which the Lord constituted and sent forth the Apostles, the ministry on which the Church is built and directed. It does not concern the apostolic meaning of all actions, even the most intimate and hidden ones, but rather with the real nature of the actions. All actions have, and must have, an apostolic meaning if done with love. Therefore, the whole of life has an apostolic dimension. Apostolic activities, however, are only those that inherently lead to that end. Commonly the adjective "sacred" is added to apostolate to show the connection with holy orders (its foundation) and to distinguish it from other broader apostolic activities.

Also there are the *works of apostolate,* which, by their nature, are a consequence of apostolic action: for example, parishes.

c) *Spiritual and corporal works of mercy* are distinguished from works of apostolate. These works cannot be properly defined as works of apostolate. Through them one "participate[s] in the pastoral mission of the Church" (c. 676). Participation in the pastoral function of the Church, then, does not mean such work itself is the pastoral and apostolic mission of the Church, but assumes its meaning to the extent it is founded and developed in faith with a supernatural motive. The works through which the Church comforts the poor and sick, and the works it undertakes when it is moved by any kind of human suffering, whether spiritual or physical, certainly forms a part of the Church's mission, in the same way that they were essential parts of Jesus' mission, but in themselves they are not works of apostolate. They are a function of the apostolate in the same way that the Lord was moved by all human suffering and took it onto his shoulders as a mark of a later and final salvation.

3. *The apostolate of giving witness in the consecrated life*

We now comment on the text of the chapter's first canon. The multiplicity of sources that underlie its composition (*LG* 42, 44, 46; *CD* 33; *PC* 5, 6; *AG* 11, 12; *MR* 14; *LMR* II, 26) clearly shows that it will deal with the nature of both religious life and the Church. The Church is built on the

fidelity to one's proper vocation, lived out with coherence and fidelity and in the fullness of charity. Religious life has an apostolic efficacy in itself in that it testifies to the absolute primacy of God, the transcendence of His love, and announces future realities (cf. cc. 573, 607, 602, etc.). Canon 663 § 1 recalls that "the first and principal duty of all religious is to be the contemplation of divine things and constant union with God in prayer." Its supreme rule is the following of Christ (c. 662). Thus, it is easily understood that the first apostolate to which all religious are called is the testimony of consecrated life. The testimony is nourished by prayer that unites with God—according to the diverse forms that the Code has already recalled in the chapter on obligations and rights of the institutes and its members, particularly in c. 663—and with penance, which is an essential element of the constant conversion to which religious are called, as stated in c. 664, which exhorts religious to persevere the conversion of their heart to God.

674 **Instituta, quae integre ad contemplationem ordinantur in Corpore Christi mystico praeclaram semper partem obtinent: Deo enim eximium laudis sacrificium offerunt, populum Dei uberrimis sanctitatis fructibus collustrant eumque exemplo movent necnon arcana fecunditate apostolica dilatant. Qua de causa, quantumvis actuosi apostolatus urgeat necessitas, sodales horum institutorum advocari nequeunt ut in variis ministeriis pastoralibus operam adiutricem praestent.**

Institutes which are wholly directed to contemplation always have an outstanding part in the mystical Body of Christ. They offer to God an exceptional sacrifice of praise. They embellish the people of God with very rich fruits of holiness, move them by their example, and give them increase by a hidden apostolic fruitfulness. Because of this, no matter how urgent the needs of the active apostolate, these institutes cannot be called upon to assist in the various pastoral ministries.

SOURCES: *LG* 46; *CD* 35, 1; *PC* 7, 9

CROSS REFERENCES: c. 667

COMMENTARY

Velasio De Paolis, cs.

Apostolic meaning of institutes dedicated entirely to contemplation

This canon does not deal with the contemplative dimension that all institutes should have, but with those institutes integrally dedicated to the contemplative life: those who organize, structure, and order their lives around contemplation.

The Council has distinguished between the institutes dedicated to contemplation and those completely dedicated to contemplation (cf. *PC* 7). The Code draws this distinction with reference to cloister as well (cf. c. 667), which protects and aids contemplation. The institutes completely dedicated to contemplation exclude from their purpose all apostolic activity in extended service to the community, while other contemplative institutes may dedicate their activity, though in a limited way, to the service of neighbors together for the community itself.

Canon 674 takes into consideration the institutes entirely dedicated to contemplation because at times the usefulness of their charism raises objections, even by the ecclesial community. Evidently, however, what the canon says about these institutes applies also to the rest of the contemplative institutes and, in general, to the contemplative dimension of the Christian life, which the contemplative institutes especially emphasize.

These institutes make extraordinarily clear the proper meaning of the religious institutes as being exceptional witnesses to the transcendence of God's love (cf. *ET* 4) and to His absolute primacy (cf. *PC* 5). Thus, the Code, repeating the Council's words, states that such institutes "always have an outstanding part in the mystical Body of Christ." With those words we are shown the way to understand their presence in the Church: the reality of the mystical Body of Christ that grows and expands first and foremost through the love that motivates one's work, not by the work itself. Pius XII, in Encyclical *Mystici Corporis*, wrote, "This is a deep mystery, and an inexhaustible subject of meditation, that the salvation of many depends on the prayers and voluntary mortification which the members of the Mystical Body of Jesus Christ offer for this intention."[1]

The canon also offers us the direct explanation of that "outstanding part": "[t]hey offer to God an exceptional sacrifice of praise. They embellish the people of God with very rich fruits of holiness, move them by their example, and give them increase by a hidden apostolic fruitfulness." The canon's conclusion is then understood, "Because of this, no matter how urgent the needs of the active apostolate, these institutes cannot be called upon to assist in the various pastoral ministries." It could be said that this is particularly important in today's culture where there exists the cult of technology and efficiency as measures of human values. From that perspective it can also be understood what one reads in *Ad gentes* 18, since the contemplative life belongs to the fullness of the presence of the Church, it must be established everywhere in the new churches.

1. In *AAS* 35 (1943), p. 213.

675 **§ 1. In institutis operibus apostolatus deditis, apostolica actio ad ipsam eorundem naturam pertinet. Proinde, tota vita sodalium spiritu apostolico imbuatur, tota vero actio apostolica spiritu religioso informetur.**

§ 2. Actio apostolica ex intima cum Deo unione semper procedat eandemque confirmet et foveat.

§ 3. Actio apostolica, nomine et mandato Ecclesiae exercenda, in eius communione peragatur.

§ 1. Apostolic action is of the very nature of institutes dedicated to apostolic works. The whole life of the members is to be imbued with an apostolic spirit, and the whole of their apostolic action is to be animated by a religious spirit.

§ 2. Apostolic action is always to proceed from intimate union with God and is to confirm and foster this union.

§ 3. Apostolic action exercised in the name of the Church and by its command is to be performed in union with the Church.

SOURCES: § 1: *LG* 12; *PC* 8
§ 2: *PC* 8
§ 3: *CD* 33–35; *PC* 8; *AA* 20d, 23; *ES* I: 23–40; *GCD* 129

CROSS REFERENCES: cc. 205, 209, 578, 673, 676

COMMENTARY

Velasio De Paolis, cs.

Apostolate and religious life in institutes dedicated to works of the apostolate

The institutes not dedicated completely to contemplation still recognize contemplation as their primary mission and add to it limited apostolic works. Other institutes dedicate themselves properly and specifically to apostolic activities. This canon does not distinguish between those diverse possibilities. However, such a distinction was clear in Church tradition and conciliar documents, particularly in *Perfectae caritatis,* which readily describes successive and gradual differences in nos. 7–9. Number 7 addresses only institutes entirely dedicated to contemplation. All others are included in no. 8, which deals with "clerical and lay [institutes], engaged in different kinds of works of apostolate." Of the latter it is

said that "The Church has bestowed upon them apostolic and charitable activities, which are of the very nature of religious life, and should be performed in Its name." But not everyone regards the apostolate's being in the nature of the religious life in the same way. In fact, no. 9 shows the need to precisely define the meaning of the apostolate for monastic and conventual life: "The principal duty of monks is to present to the Divine Majesty a service at once humble and noble within the walls of the monastery. This is true whether they dedicate themselves entirely to divine worship in the contemplative life, or have legitimately undertaken some work of apostolic or charitable activity." It concludes "There are religious orders which, from their rule or institution, unite the apostolic life with choral office and monastic observances. They should adapt their way of life to the needs of their proper apostolate, at the same time loyally preserving their way of life, for it has been of considerable service to the Church."

The *Schema* of 1977 (c. 100 § 2)[1] anticipated the possibility that monastic institutes not totally dedicated to contemplation might also undertake works of apostolate, but only those appropriate to the nature of monastic life.

The same *Schema*, under the title "Institutes Dedicated to Works of Apostolate" dealt with the canonical, conventual, and apostolic institutes, and established the general principle that the apostolic activity corresponds to the institute's nature. One should keep in mind, however, that the institutes do not emphasize or apply the apostolate in the same manner. Although the Code has partially rectified and clarified the Council's approach, the 1977 *Schema* perhaps has done a better job of overcoming the ambiguity remaining in the current *CIC*: the *Schema* distinguished between canonical, conventual, and apostolic institutes even though all three institutes were grouped under the same title. In fact, the apostolate does not belong in the same way to all the institutes dedicated to works of apostolate. Therefore, each institute should find its own way according to its own charism and its own tradition (cf. c. 578). In a particular way, the common life of each institute[2] depends on its own way of applying the apostolate.

Canon 675 generally addresses the institutes devoted to works of apostolate. This title seems to cover all institutes except those dedicated entirely to contemplation, which have absolutely no part in works of apostolate. It seems that in this canon works of apostolate include spiritual and corporal works of mercy—part of the Church's pastoral function (c. 676)—as well as proper apostolic activity (see commentary on c. 673).

1. Code Commission, *Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum* (Reservatum) (Rome 1977).
2. Cf. P. Dortel-Claudot, *Il ministero del governo* (Rome 1984), pp. 3–55.

The canon has three paragraphs, which cover the doctrine and norm of *Perfectae caritatis* 8.

1. *Apostolic action is part of the very nature of the institutes*

Perfectae caritatis 8 states that apostolic action belongs to the very nature of religious life. The Code even more correctly states that it forms a part of the nature of institutes devoted to works of apostolate. Religious life as such does not require works of the apostolate; indeed, some institutes exclude them. The canon does not recognize the line of argument of the Decree, which may appear a little surprising and cause some difficulty. The codified expression of the idea seems to be more understandable: the nature of the institute lies in its physiognomy, its general juridical configuration. Thus, an institute whose constitution allows works of the apostolate cannot consider those works alien to its physiognomy, its apostolate being a constituent element of its patrimony (cf. c. 578). Besides, the apostolate never has been considered as contrary to religious consecration. The Church, however, has always rejected the idea of using consecration as merely an instrument of apostolic activity. If we were to accept that consecration to God is done to foster dedication to apostolic activities, the religious vocation as God's special calling by living the life of Jesus would lose its meaning, and consecration itself would lose its meaning since it cannot be thought of as a gift of self to God and as simultaneously an instrument for other purposes, including apostolic activities, no matter how noble. Moreover, the apostolic mission comes from God: the same God that receives the offering of the person also gives the mission for the apostolate through the Church. Keep in mind the observation of Instruction *Renovationis causam*: "It is important to remember that, even though in Institutes dedicated to the apostolate, apostolic and charitable works are essential to the religious life, this apostolic activity is not the primary aim of religious profession. Indeed, the same apostolic works could be carried out quite well without the consecration deriving from the religious state although, for one who has taken on its obligations, this religious consecration can and must contribute to greater dedication to the apostolate" (*RC* 2).

If the apostolate belongs to the very nature of the institute, the religious cannot consider an apostolic activity to which he is assigned as alien, supplementary, or subsidiary—or worse, as harmful—to his consecration. The apostolate belongs to his vocation and thus § 1 concludes: "therefore, the whole life of the members is to be imbued with an apostolic spirit, and the whole of their apostolic action is to be animated by a religious spirit." Consecration to God and dedication to the apostolate must form a unity, but not outwardly dedicating oneself to only the apostolate or to only contemplation with the excuse that the apostolate pertains to the nature of religious life or that religious life is already part of the apostolate, but inwardly. The spirituality of religious in the institutes

dedicated to the apostolate should be motivated by a profound apostolic and missionary sense, and at the same time, apostolic activity should spring from a spirituality proper to those consecrated to God by the profession of the evangelical counsels. Note the two verbs: "*imbuatur*" (be imbued) and "*informetur*" (be informed). Both indicate and express an interior reality that should permeate, penetrate, mold, and give form to everything.

2. *Apostolic action should always proceed from intimate union with God and confirm and foster this union*

Without God as its source, apostolic action makes no sense: it is He who sends out the apostle to announce His message. It is God Himself who makes apostolic action effective. There always exists, however, the danger that the activity, although holy, may lose its essence; thus the second part of the affirmation is united to the first one: to the extent that the apostolic action is born out of the union with God, it deepens and consolidates that union. Therefore, apostolic action is born of prayer and leads to prayer, for only in God does the apostle continually rediscover the meaning of apostolic action.

3. *Apostolic action and the Church*

The apostolate comes from God through the Church and finds its meaning in the edification of the Church. In particular, the religious institute, as a public juridical person (cf. c. 116 § 1), acts in the name of the Church. The Church exercises its apostolate publicly through the institute. However, the apostolate of the Church can have a double content: it can concern an activity pertaining to all the faithful, just as members of the Church, or else it can be an activity that pertains to the hierarchy. In order to exercise the proper ministry of the faithful (and carry it out in the name of the Church) or a ministry which corresponds to its hierarchy but is entrusted to others including the laity, a mandate is required from the Church itself. The mandate mentioned in § 3 of this canon means both things. In effect, there are religious who carry out an apostolate that, per se, belongs to all the faithful as such, and others that practice an apostolate that belongs to the hierarchy. From this statement the canon deduces a very important rule: the apostolate is exercised in communion with the Church. "In communion with the Church" here does not limit itself to communion of the faith, the sacraments, and obedience of c. 205, but to that of c. 209: the observance of all proper duties toward the Church, whether universal or particular. This means that religious, while realizing their apostolate, should have as references for doctrine and practice of the ministry the pastors of the Church. An apostolate at the margin of obedience to the legitimate pastors is a contradiction in itself.

676 Laicalia instituta, tum virorum tum mulierum, per misericordiae opera spiritualia et corporalia munus pastorale Ecclesiae participant hominibusque diversissima praestant servitia; quare in suae vocationis gratia fideliter permaneant.

Lay institutes of men and women participate in the pastoral mission of the Church through the spiritual and corporal works of mercy, performing very many different services for people. They are therefore to remain faithful to the grace of their vocation.

SOURCES: *LG* 46; *PC* 10

CROSS REFERENCES: c. 577

COMMENTARY

Velasio De Paolis, cs.

Religious institutes and the works of mercy

The apostolate manifested in apostolic activities in the strict sense (see commentary on c. 673) corresponds to the hierarchic Church and is carried out through its mandate and in its name. The Church also has myriad institutes among those dedicated to works of apostolate, but in reality they do not perform apostolic activity in the strict sense, as was already mentioned. Usually they are lay institutes, most of which are composed of women who perform corporal and spiritual works of mercy. Those activities do not correspond properly to the hierarchy, but can it be said that they are thereby bereft of apostolic witness or significance?

As public juridical persons, those institutes act officially and publicly for the benefit of and in the name of the Church. They perform social works of charity and mercy, which, although not properly ministerial activities of the hierarchic Church, necessarily belong to the Church, and express its very nature—springing from the *agape* that properly constitutes the Church. From this point of view, they form a part of the pastoral activity that edifies the Church, and the institutes that carry out these works, although lay, participate in that activity, inasmuch as they also act in the name of the Church itself and by its mandate. Therefore, they are exhorted to persevere in the grace of their proper vocation, overcoming whatever contrary voice that would desire the Church to renounce such

activities, as though they did not belong to or as though they played merely a subsidiary or supplementary role in respect to the State.

Apostolicam actuositatem 8 explains the meaning of charitable action of the Church as follows: "While every exercise of the apostolate should be motivated by charity, some works by their very nature can become specially vivid expressions of this charity. Christ the Lord wanted these works to be signs of His messianic mission." (cf. Mt 11:4–5)

The greatest commandment in the law is to love God with one's whole heart and one's neighbor as oneself (cf. Mt 22:37–40). Christ made this commandment of love of neighbor His own and enriched it with a new meaning. For He wanted to equate Himself with His brothers and sisters as the object of this love when He said, "As long as you did it for one of these, the least of My brothers and sisters, you did it for Me" (Mt 25:40). Assuming human nature, He bound the whole human race to Himself as a family through a certain supernatural solidarity and established charity as the mark of His disciples, saying, "By this will all people know that you are My disciples, if you have love for one another" (Jn 13:35).

"In her very early days, the holy Church added *agape* to the eucharistic supper and thus showed itself to be wholly united around Christ by the bond of charity. So, too, in every era it is recognized by this sign of love, and while it rejoices in the undertakings of others, it claims works of charity as its own inalienable duty and right. For this reason, pity for the needy and the sick and works of charity and mutual aid intended to relieve human needs of every kind are held in highest honor by the Church."

Canon 577 recognizes in these institutes the continuation of Christ's work, which "is for the good of all."

677 **§ 1. Superiores et sodales missionem et opera instituti propria fideliter retineant; ea tamen, attentis temporum et locorum necessitatibus, prudenter accommodent, novis etiam et opportunis mediis adhibitis.**

§ 2. Instituta autem, si quas habeant associationes christifidelium sibi coniunctas, speciali cura adiuvent, ut genuino spiritu suae familiae imbuantur.

§ 1. Superiors and members are faithfully to hold fast to the mission and works which are proper to the institute. According to the needs of time and place, however, they are prudently to adapt them, making use of new and appropriate means.

§ 2. Institutes which have associations of Christ's faithful joined to them are to have a special care that these associations are imbued with the genuine spirit of their family.

SOURCES: § 1: *PC* 20; *ES* I: 28
§ 2: cc. 702–706; *AA* 25; *ES* I: 35; *MR* 59

CROSS REFERENCES: cc. 94, 117, 299 § 3, 303, 311, 312 § 2, 314, 681, 725

COMMENTARY

Velasio De Paolis, cs.

The legislator, having underlined the ecclesial meaning of the apostolate of the institutes, exhorts them to remain faithful to their mission and at the same time to review and update themselves. In particular, the canon invites them to make the laity participants in their own charism. In this regard, it is opportune to keep in mind canons c. 303, which addresses associations of the faithful joined to institutes of the consecrated life; c. 725, which allows secular institutes to associate with the lay faithful; and finally, c. 331, which exhorts the members of the ICL with some responsibilities in these associations to "lend assistance to the works of apostolate."

1. *Fidelity and renewal*

The canon's text comes from *Perfectae caritatis* 20. One can easily sense in it the spirit of the Council that invites, on one hand, the institutes

to remain faithful to their proper vocation, and on the other, to renew themselves spiritually in their activity. Faced with rapid change that upsets everything, the temptation is to abandon all, in the fickle illusion that something new will settle all problems simply because it is new. Paragraph 1 of this canon confirms, above all, the validity of the institute's vocation and works. Therefore, each institute is to remain faithful to its mission and works. *Mission* has a fuller meaning: an end considered in relation to the religious life and the institute's spirituality. *Works* are the principles and activities through which the mission is carried out. The canon speaks of the institute's fidelity to its *proper* works—not to extraneous works, but only to those that pertain to the institute's ends. Regarding those to which the institute might have dedicated itself perhaps only because of external circumstances, if the latter is proved to be the case, they must be abandoned.

Proper works are only those compatible with and directed toward the mission, but they are not necessarily principles proper to the institute. Thus, for example, caring for the sick or teaching can be works proper to the institute, directed to its ends, while at the same time "not proper" because the institute can be a mere agent acting in the name of another entity, such as the diocese or parish (cf. c. 681).

Finally, care must be taken to have these works updated and continually reviewed to keep pace with changing times, places, and methods.

2. *Association of the institutes*

Along with religious institutes, Church history has seen the emergence of great movements and groups among the faithful. Although not forming a part of the institutes, they have felt the need to participate in their spirituality in various ways, thus giving rise to second and third orders, which have always been regulated by the canonical system (cf. cc. 702–706 *CIC*/1917). These associations are, not infrequently, established as public juridical persons. The Code deals with them under the title "Associations of Christ's Faithful" whether private or public (cc. 298–329). Public associations are always established as juridical persons while private associations may or may not be established as juridical persons. For religious institutes to establish public associations, an apostolic privilege is necessary (cf. c. 312 § 2). Canon 303 indicates when these associations have the configuration of the third order.

They generally will be private associations that arise from the institute's own initiative: groups of faithful who participate in the institute's spirituality or apostolate. Sometimes their members also assume the commitment of the profession of the evangelical counsels by means of a vow. They are not religious properly speaking because there is no public pro-

fession of the evangelical counsels, insofar as these associations are not religious institutes canonically erected (c. 573 § 2).

The associations have their own statutes according to the norms established in the Code (cf. cc. 94, 117, 299 § 3, 314). In all cases, no association can be recognized if its statutes are not approved by competent authority (c. 299 § 3). For associations constituted or linked in some way to religious institutes, the institutes may seek approval of the associations' statutes from the Holy See, who can recognize these associations as proper works of the institutes. Accordingly, these associations become part of the mission of the proper institute and are work of apostolate. Thus it can be understood why the Code deals with them under the title "Of the Apostolate of the Institutes."

The Code prefers the institutes to form associations that participate in their spirit and mission. Nevertheless, c. 677 § 2 urges the institutes to act seriously: they are to assist those associations and "have a special care that [they] are imbued with the genuine spirit of their family." The associations are not for appearances, show, or vanity.

678 **§ 1. Religiosi subsunt potestati Episcoporum, quos devoto obsequio ac reverentia prosequi tenentur, in iis quae curam animarum, exercitium publicum cultus divini et alia apostolatus opera respiciunt.**

§ 2. In apostolatu externo exercendo religiosi propriis quoque Superioribus subsunt et disciplinae instituti fideles permanere debent; quam obligationem ipsi Episcopi, si casus ferat, urgere ne omittant.

§ 3. In operibus apostolatus religiosorum ordinandis Episcopi dioecesani et Superiores religiosi collatis consiliis procedant oportet.

§ 1. In matters concerning the care of souls, the public exercise of divine worship, and other works of the apostolate, religious are subject to the authority of the Bishops, whom they are bound to treat with sincere submission and reverence.

§ 2. In the exercise of an external apostolate towards persons outside the institute, religious are also subject to their own Superiors and must remain faithful to the discipline of the institute. If the need arises, Bishops themselves are not to fail to insist on this regulation.

§ 3. In directing the apostolic works of religious, diocesan Bishops must proceed by way of mutual consultation.

SOURCES: § 1: cc. 344, 500 §§ 1 et 2, 512 § 2,2°, 608 § 1, 618 § 2, 619; *MG*: 570–571; *LG* 45; *CD* 34, 35: 1, 3, 4; *PC* 6; *ES* I: 23 § 1, 24, 25 § 1; 26, 29, 35–36
§ 2: *LG* 44, 45; *CD* 35: 2; *PC* 14; *ES* I: 25, 26, 29 § 1; *MR* 28; 33–35, 46, 52
§ 3: *CD* 35: 6, 36; *AG* 32, 33; *ES* I: 24, 30, 31, 39 § 1; *ES* II: 43; *DPMB* 207, b, c, e; *MR* 21, 62–66; *LMR* II: 23

CROSS REFERENCES: cc. 274, 375, 573–578, 586 § 2, 673, 676

COMMENTARY

Velasio De Paolis, cs.

1. *The apostolate of religious in the diocese*

Although in the service of the universal Church, religious perform their mission and exercise the apostolate in the particular church under

the care and guidance of the diocesan bishop. They obey their own superiors according to the nature of the institute, and cooperating with the priests and the diocesan community according to canonical norms.

The Code, after having discussed the ecclesial dimension of the ICL extensively (cf. particularly cc. 573–578), regulates, in a series of canons (cc. 678–683), the place of the religious in the particular church. This canon states the general rule governing their relationships; the remaining canons regulate particular cases.

Among the canons, the present one is the most important, for it regulates *the exercise of the ministry and apostolate subject to the authority of the bishop*. It is a canon of great importance for the religious who work in the particular churches. In fact, it is a subject matter that has always caused difficulties between bishops and the religious. Recognizing that the religious must balance diverse demands, the canon tries to deal with objective difficulties, which may stem from ignorance on the part of the religious of the requirements of the particular church and the figure of the bishop in the diocese, as well as from insufficient attention to the reality and the significance of religious life on the part of the many components of the particular church. The numerous sources that form the foundation of this canon also show a tedious history of finding delicately balanced relationships that require much prudence and mutual respect. Understanding the canon presupposes a keen understanding of the particular church and religious life.

This canon has multiple sources and they are to be taken into account for the interpretation of the present norm.

Foremost, religious must recognize the dignity of the bishop in his diocese: they always owe him devout respect and obedience. He is the pastor whom the Holy Spirit has appointed to direct the Holy Church of God. He is a successor to the Apostles, and, as a member of the Episcopal College, he represents the universal Church.

Religious are also subject to obedience to the bishop in three areas: the care of souls, the public exercise of divine worship, and other apostolate works. Considering the principal sources of the canon, the drafting appears very simplified in respect to the confused and casuistic norms of these sources. There are three areas of submission to the diocesan bishop: the first two have a rather technical and precise terminology (the care of the souls and public exercise of divine worship), while the third is residual and includes everything not covered in the first two. In fact, the first two areas also fit under apostolate works; moreover they are apostolic activities in the strict sense. The expression used to delimit the third area is therefore understood to be "the remaining works of apostolate," that is to say, everything not covered in the first two categories. Nevertheless, it ought to still concern works of the apostolate.

It should be added before going on to consider the three categories of activities subject to the bishop that they are three categories that try to express the entire scope of submission of the activity of the religious to the bishop, always according to the norms of the law.

Finally, it should be noted that this submission means that the religious ought to respect the dispositions and directives of the diocesan bishop, who is responsible for the life of the Church and pastoral activities in his diocese. But that subjection does not mean that religious can be compelled to assume tasks that are contrary to their ends or to carry them out in a manner that contradicts said ends. In effect, the Church's steadfast principle is firm that each institute conserve its proper patrimony and remain faithful to it. The placement of the religious in the particular church must not impair the charism of the religious institute, but should place it at the service of the particular church, which is enriched for having done so. The exercise of the apostolate as such is subject to the power of the diocesan bishop, and not the manner of the apostolate, which ought to conform to the character and nature of the religious institute (cf. *CD* 35, 1). It is with this perspective that the articulation of this canon is understood in three paragraphs that cover the subjection of the religious to the diocesan bishop, subjection to their own superiors, and the necessity of dialogue between bishop and the religious superiors.

2. *Subjection of religious to the power of the diocesan bishop*

There are three areas in which the religious must submit themselves to the power of the diocesan bishop: care of souls, exercise of public worship, and other works of apostolate.

a) *Cura animarum.* This is the classic expression to indicate the diverse functions that the sacred minister is called to in an office entailing the care of souls (c. 274). The care of souls pertains to pastoral offices, that is, the tasks that a pastor of souls (those constituted in sacred order) should undertake for the salvation of his flock. Therefore, this expression refers to the clerical institutes and appropriately includes the triple function of teaching, sanctifying, and governing (cf. c. 375). It is therefore an expression of wide scope. We can say that we imply that religious are subject to the bishop in everything concerning the three *munera*: "*docendi*," "*regendi*," and "*santificandi*." More specifically, the following are included in the exercise of the care of souls: parish ministry, rector of the church, chaplain to the community preaching to the people, catechesis, ministry in Catholic schools, religious and moral education, in public writings, in the direction of associations of faithful, and in the attitudes and conduct of the religious in public.

b) *Public exercise of divine worship* comprises the vast area of the administration of the sacraments, both general and special. That is, the

scope of *communicatio in sacris* (c. 844): the administration of baptism and confirmation, celebration of the Eucharist, the sacrament of penance, anointing of the sick, holy orders, and matrimony. Public worship also includes the sacramentals as well as funerals, cult of the saints, holy relics and sacred images, and sacred places and times.

c) *Other works of apostolate* is an expression that includes all activities (even diocesan pastoral life) not included in the prior two expressions. They are primarily the activities addressed in c. 676, through which the institutes participate in the pastoral function of the Church and express the commitment of the Church to the essential advancement of the people. This latter area is not always easy to define and requires in a particular way a continuous exchange between religious superiors and diocesan bishop.

3. *Submission of religious to their own superiors*

Religious never cease to be such, not even when they exercise their apostolate outside the religious houses in the service of the diocese. They must always obey their own superiors, and although they owe obedience to their directives and are always subject to the bishop in the exercise of the apostolic ministry, they carry out the ministry in the name of the institute and as a member of the religious according to the nature of their institute. Paragraph 2 of this canon clearly affirms this, drawing heavily on conciliar sources: "In the exercise of the external apostolate the religious also depend on their superiors and must remain faithful to the discipline of the institute." An apostolate that lends itself to relaxed religious discipline would undermine the institute by calling into question the primary apostolate of the religious, that is, the testimony of consecrated life (see c. 673 and its commentary). The bishops enforce ecclesiastical discipline and impose the Church's will on religious to foster the institutes' autonomy and patrimony (cf. 586 § 2). Indeed, precisely because of their episcopal office, the bishops are exhorted to "to insist on this regulation if the need arises."

Certainly, it is not the task of the superiors to issue, in the pastoral area, directives concurrent with those of the bishop; but they have the function of vigilance that religious fulfill their duties faithfully, pursuant to the laws of the universal and particular church while observing their constitutions.

4. *Understanding between bishops and superiors in the organization of the apostolate for the religious*

It is not always easy to distinguish precisely between the competence of the bishop and that of the religious superiors. Therefore, it is necessary that a profound understanding between the bishops and superiors always exist: the bishops should be ecclesially sensitive to the nature of the religious life and its discipline, and the religious superiors should try to see the apostolate as necessary to the religious life and pertinent to the very nature of the institute. The religious superiors ought to be conscious of the responsibility they have in this sector, and approach the diocesan bishop through dialogue with him.

679 Episcopus dioecesanus, urgente gravissima causa, sodali instituti religiosi prohibere potest quominus in dioecesi commoretur, si eius Superior maior monitus prospicere neglexerit, re tamen ad Sanctam Sedem statim delata.

For the gravest of reasons, a diocesan Bishop can forbid a member of a religious institute to remain in his diocese, provided the person's major Superior has been informed and has failed to act; the matter must, however, immediately be reported to the Holy See.

SOURCES: cc. 618 § 2, 2°, 619; *PM* 39

CROSS REFERENCES: cc. 18, 134 § 3, 1315, 1319, 1320

COMMENTARY

Velasio De Paolis, cs.

Expulsion of a religious from the diocese

Canon 1320, recognizing the principles of *CIC*/1917, states a general rule: "In all matters in which they come under the authority of the local Ordinary, the religious can be punished by him with penalties." Thus competent legislative or preceptive authority can protect the laws and precepts with appropriate penalties (cc. 1315 and 1319). Accordingly, bishops can use coercive power over the religious insofar as they are subject to his authority. On the other hand they have no power over the religious beyond this scope.

Specifically, whether a religious resides or does not reside in the religious house of his institute depends on the competent religious superior, not on the bishop. Nevertheless, the presence of a religious in the diocese can create grave problems if he does not follow ecclesiastical discipline or the universal and particular law. The bishop is within his power to bring the matter to the religious' attention, but he is not competent to separate him from the religious community. The bishop can bring the matter to the religious' major superior, who should resolve the matter.

The present canon contemplates a very grave case, completely exceptional and that, in itself, is an exception to the general discipline of the canonical system. Therefore, it is to be strictly interpreted (c. 18). The exception is highly circumscribed and has many clauses to guarantee it. The diocesan bishop (cf. 134 § 3) may prohibit an individual religious from residing in his diocese, but only for very grave and urgent reasons, and then

only after the major superior has been notified and has failed to act. In all cases, the matter must be reported immediately to the Holy See. The canon does not proscribe a penalty, but provides a provisional single act of administration, since the Holy See will be knowledgeable about the matter and make a definitive decision.

680 **Inter varia instituta, et etiam inter eadem et clerum saecularem, ordinata foveatur cooperatio necnon, sub moderamine Episcopi dioecesani, omnium operum et actionum apostolicarum coordinatio, salvis indole, fine singulorum institutorum et legibus fundationis.**

Organised cooperation is to be fostered among different institutes and between them and the secular clergy. Under the direction of the Bishop, there is to be a coordination of all apostolic works and actions, with due respect for the character and purpose of each institute and the laws of its foundation.

SOURCES: c. 608 §§ 1 et 2; SCR Normae, 26 mar. 1956, 4 (*AAS* 48 [1956] 296); *SS* I; *CD* 35: 5, 6; *AG* 33; *ES*, I, 28; *ES* II: 43; *ES* III: 21; *MR* 36, 37, 59; *LMR* I: 21, 22

CROSS REFERENCES: cc. 369, 381 § 1, 392, 586 § 2, 590, 593, 594, 678

COMMENTARY

Velasio De Paolis, cs.

Cooperation in apostolic action under the direction of the bishop

The diocesan community has only one apostolic endeavor: that of the Church, whose proper pastors specify its objectives and the means to accomplish them. Everyone, while remaining faithful to their proper identity, must work in harmony toward the achievement of that endeavor. Under the responsibility of the bishop, everyone has to cooperate and coordinate with those who do pastoral work, diocesan and religious clergy, and the religious institutes. Now would be a good time to consider this question on a global scale.

John Paul II, on presenting the document *Mutuae relationes* to the general superiors, stated: "Wherever in the world you find yourselves, you are in a specific local Church, because of your vocation and mission for the universal Church."[1] Therefore, this means that religious institutes, since they belong to the Church, should remain faithful to their identity and patrimony in the service of the entire Church without identifying with or becoming part of a particular church. On the other hand, when in a particular church, the religious should be obedient and faithful to the

1. Cf. *Informationes CRIS* (1978), p. 255.

legitimate pastors (c. 678). To assure this dual fidelity, religious institutes are subject both to the supreme authority of the Church (that alone can guarantee fidelity to their patrimony and identity) and to the pastors of the particular church. As a further safeguard, the canons regulate the ICL's autonomy and dependence, both in the universal and particular sphere. Since the identity of the religious institutes is at stake, they depend on and are subject to the supreme authority of the Church regarding matters of their internal life. Their apostolic actions, since they take place in a certain diocese, are subject to its bishop. Nevertheless, this principle needs further specifications, which the Code does not omit. Foremost, keep in mind that, according to c. 590, in areas in which the religious relates to the universal Church all are subject to the authority of the Supreme Pontiff. Canons 593 and 594 (see commentaries) apply to the internal life of the institutes in general. The canons dealing with the apostolate, especially c. 678, deal with the dependency of the religious on local ordinaries. Nevertheless, c. 678 can only be fully understood in the context of the bishops' responsibility in their own diocese and as members of the Episcopal College in the universal Church (cf. cc. 381 § 1 and 392).

In his pastoral office, the bishop exercises the functions of Magisterium (book III), sanctification (book IV) and governance according to the power conferred on him, in matters concerning the administration of temporal goods (book V), as well as in ecclesiastical discipline, and canonical sanctions (book VI), or procedural safeguards to ensure justice (book VII). The Code also specifies each area of the bishop's competence over religious and religious institutes, always seeking a balance between respect for the autonomy and identity and their dependence on the Holy See and obedience to the diocesan bishop to whom they owe submission. It is necessary to keep these general principles in mind, and to learn the relevant canons and their commentaries concerning the apostolate. Pay particular attention to c. 678.

We will conclude with a general observation. Canon 369, defines the diocese as a portion of the people of God entrusted to the pastoral care of a bishop, and says that in it "the one, holy, catholic, and apostolic Church of Christ is truly present and operative." The particular church does not shine in its catholicity until it has the multiplicity of ICL that adorn the face of the Church. The Decree *Ad gentes* affirms this expressly regarding contemplative life: "The contemplative life should be restored everywhere, because it belongs to the fullness of the Church's presence" (*AG* 18). The bishop is the pastor of his church and at the same time he is a member of the Episcopal College, and thus responsible, though at different levels, for his church and the entire Church. The law regulates the exercise of that responsibility; nevertheless, it exists. The religious belong to the universal Church—one, holy, catholic, and apostolic, which they know is present in the particular church. Their presence and action must manifest this dual reality of the same particular church: they should be truly

and deeply a part of it, with real and effective obedience to the bishop, and should cooperate with the entire ecclesial community. Simultaneously they must conserve their own identity and patrimony in a Catholic dimension. The diocesan bishop guarantees the autonomy of the institutes (c. 586 § 2). Canon 678 imposes on the religious the duty to obey the bishop; it also tells the bishop to exhort the religious to obey their own superiors and remain faithful to the discipline of the institute.

681 **§ 1. Opera quae ab Episcopo dioecesano committuntur religiosis, eiusdem Episcopi auctoritati et directioni subsunt, firmo iure Superiorum religiosorum ad normam can. 678 §§ 2 et 3.**

§ 2. In his casibus ineatur conventio scripta inter Episcopum dioecesanum et competentem instituti Superiorem, qua, inter alia, expresse et accurate definiantur quae ad opus explendum, ad sodales eidem addicendos et ad res oeconomicas spectent.

§ 1. Works which the diocesan Bishop entrusts to religious are under the authority and direction of the Bishop, without prejudice to the rights of religious Superiors in accordance with can. 678 §§ 2 and 3.

§ 2. In these cases a written agreement is to be made between the Bishop and the competent Superior of the institute. This agreement must expressly and accurately define, among other things, the work to be done, the members to be assigned to it, and the financial arrangements.

SOURCES: § 1: cc. 608 § 1, 631 § 1; *AG* 32; *ES* I: 25 § 1; 29 § 2; 30 § 1; 31
§ 2: *ES* I: 30 § 1, 31, 33 §§ 1 et 2; *MR* 56 b, 57

CROSS REFERENCES: cc. 520, 678, 682

COMMENTARY

Velasio De Paolis, cs.

1. *Entrusting activities in the diocese to religious: general observations*

Canons 681 and 682 are closely related and must be read together, and so we offer here a common introduction to both of them. These norms refer to other canons that deal with the same matters, but for now, it is enough to remember and refer to c. 520 which deals with the entrusting of a parish to a religious institute.

Before commenting on these two canons, some preliminary clarifications are necessary. Both canons mention works and offices that are entrusted to the religious. As for the works, it must be pointed out that the canon does not refer to works entrusted to the institute because they are not proper to it. Authorization for the exercise of works of the institute is already included in the bishop's consent to erect the religious house

(c. 611 § 2). This canon deals with works entrusted by the bishop to an institute. Evidently these works are also, in a certain sense, proper to the institute in that they correspond to its purpose (see commentary on c. 677 § 1). Indeed, the institute may only as an exception assume or manage works that do not pertain to their proper ends or are not carried out in ways consistent with the nature of the institute. Otherwise, its identity and patrimony would be compromised.

Entrust (committere), is the usual word found in conciliar documents to express that a task is left to the responsibility of an institute, insofar as the institute is considered particularly suitable—according to its ends and spirituality—to carry out and direct the task in a pastoral fashion. The institute assumes the responsibility from the bishop. Later the institute will adequately staff the project and otherwise provide for the project. Even if the personnel who manage the task in the name of the institute change—and this often happens—it remains the task of the institute. In those cases the words *to entrust (committere)* are clarified by *to the institute* (we find ourselves in the supposition of c. 681). Sometimes, however, the bishop no longer asks for the cooperation of the institute, but only certain members to perform a work unrelated to the institute's ends or desires, or to fill an office for which he needs a particularly qualified person who is willing to assume it. Here the work and office are not entrusted to the institute, but to the person. The bishop does not ask the institute to assume the responsibility but only that it permit the work to be entrusted to a particular religious. In effect, the institute will not assume the responsibility for the task or office, which will remain tied to the religious who will do it until the bishop decides otherwise (this is the supposition of c. 682).

Adhering to the conciliar and the post-conciliar documents, the Code frequently resorts to a "covenant" to regulate the relationships between bishops and the religious, thus striving to avoid quarrels and misunderstandings. The covenant is not exactly a contract, but it certainly contains contractual elements. The covenant is an instrument intended to peacefully and calmly regulate the relationship by addressing several issues: the activities or works to be done, economic concerns, the personnel to be employed, and the duration. Ordinarily, and in accordance with established proper law, it is the major superior who signs the covenant for the institute; although in important matters the intervention of the general superior of the institute may be required. The bishops' conferences have prepared model covenants for some activities or works frequently entrusted to institutes. These models are very useful and are not applied literally and rigidly, but are modified and applied taking into account the requirements of the situations, institutes, and entrusted works. This is especially important when parishes are entrusted to the religious institutes.

2. *Canon 681: works entrusted to an institute*

Canon 681 deals with the assignment of diocesan works "to the religious." Although the expression "to the religious" is not specific, it must mean the religious institute and not an individual member. Otherwise it would be redundant to state that the tasks are subject to the authority and direction of the bishop since works conferred upon the individual are already to be directed by the bishop.

Those tasks may be called religious since they are entrusted and confided to the religious institute. To the extent that they remain part of the diocese, they are called diocesan works. Therefore, they are "subject to the authority and direction of the Bishop." This last statement means more than the mere subjection to the bishop referred to in c. 678 § 1. Here subjection is not the only concern, but also direction. Simple subjection refers to works proper to the institute, that is, concerning diocesan pastoral activities, which are subject to the power of the bishop, but not to his direction, which lies in the institute.

The religious designated in the name of the institutes to such works are subject to the authority of the bishop; they remain religious and therefore are subject to their own religious superiors even while exercising the external apostolate. Thus there is the necessity of mutual understanding between bishop and superiors (c.678 §§ 2–3).

682 **§ 1. Si de officio ecclesiastico in dioecesi alicui sodali religioso conferendo agatur, ab Episcopo dioecesano religiosus nominatur, praesentante vel saltem assentiente competenti Superiore.**

§ 2. Religiosus ab officio commisso amoveri potest ad nutum sive auctoritatis committentis, monito Superiore religioso, sive Superioris, monito committente, non requisito alterius consensu.

§ 1. If an ecclesiastical office in a diocese is to be conferred upon a member of a religious institute, the religious is appointed by the Bishop on presentation by, or at least with the consent of, the competent Superior.

§ 2. The religious can be removed from the office at the discretion of the authority who made the appointment, with prior notice given to the religious Superior; or by the religious Superior, with prior notice being given to the appointing authority. Neither requires the other's consent.

SOURCES: § 1: cc. 455 § 1, 456, 529; *ES* I: 30 § 2, 31, 32, 33 §§ 1 et 2; *MR* 57c, 58
§ 2: cc. 454 § 5, 631 § 2; *ES* I: 32; *MR* 58

CROSS REFERENCES: cc. 127 § 2, 145–196, 671, 681

COMMENTARY

Velasio De Paolis, cs.

1. *Conferral of offices*

The object of paragraph 1 of the canon is the conferral of an office on a religious.[1] (Office should be understood as it is used in c. 145 § 1.) Religious must keep in mind c. 671, which prohibits them from assuming tasks or offices outside their institute without permission of the lawful superior.

The norm is important when it applies to offices conferred on an institute itself or when the office is conferred on a religious personally. A religious might occupy the office of pastor because the parish is consigned

1. For a general introduction to the material regulated here, see commentary on c. 681.

to a religious of the institute or because the parish is entrusted to the institute. Or the office of pastor might be freely assignable by the bishop and he has decided to confer it upon a religious. The norm contemplates the diocesan offices that are within the bishop's competence.

It is necessary to distinguish between the designation of a person to an office and the conferral of an office to an institute. To designate a person to an office presupposes having a certain authority over him, but the bishop as such cannot designate the religious on his own since they are subject to their own superiors. Consequently, for the conferral of an office or work the superiors must be willing to permit it. On the contrary, regarding the institution of the office itself, it depends on the person empowered to do so, which, in this case, is the bishop. Conferring the office results in its holder's exercising faculties joined to it in virtue of the law.

The canon refers to the role of superiors in terms of their "presentation" or "consent." The distinction is somewhat important because presentation (cf. cc. 158–163) implies more than mere consent: it is the superior who designates the person for the office. Then the bishop must confer the office on this person and cannot refuse to do so if all the requirements of law have been met. In contrast, consent presupposes that the bishop himself has taken the initiative and has designated the person for the position. The superior's consent only expresses his assent or authorization of the person designated by the bishop. The superior has the corresponding right of presentation. When the work or office is conferred on the institute, the superior must have first presented his institute. The superior gives consent when the bishop confers it personally on a religious. Remember that consent on the part of the bishop (c. 127 § 2) is required for the validity of conferral of office.

2. *Removal from office*

Removal from office is different from privation of office. The latter is penal and must follow penal procedure (cf. c. 196). The removal of a religious is based on c. 682 § 2 and it requires no particular motive or procedure as is consistent with the general character of the acts (cf. cc. 192–195). Because of their profession and especially because of their vow of obedience, the religious are *ad nutum* of both episcopal and the religious authority. Moreover, the two authorities proceed independently. It is sufficient that one inform the other, but it is not required. Indeed, in at least some cases, it is not a good idea to have reciprocal consent or a requirement that one party justify to the other the person's removal. The reasons for the principle, which were also in the old Code, are still valid to justify the inclusion in the present Code. Nevertheless, applying it rigidly is generally not necessary.

It is more likely that religious superiors make use of removal—and they readily do so, more than the bishops. Apostolic works are easily considered secondary or subordinate to the internal demands of the institutes. The institutes dedicated to the apostolate should not forget that apostolic works pertain to the very nature of the institute and therefore that they should give due consideration to apostolic activities when deciding internal movements within the institute. It is never licit to overlook the good of souls when considering personnel assignments.

683 **§ 1. Ecclesias et oratoria, quibus christifideles habitualiter accedunt, scholas aliaque opera religionis vel caritatis sive spiritualis sive temporalis religiosis commissa, Episcopus dioecesanus visitare potest, sive per se sive per alium, tempore visitationis pastoralis et etiam in casu necessitatis; non vero scholas, quae exclusive pateant propriis instituti alumnis.**

§ 2. Quod si forte abusus deprehenderit, frustra Superiore religioso monito, propria auctoritate ipse per se providere potest.

§ 1. Either personally, or through a delegate, the diocesan Bishop can visit churches or oratories to which Christ's faithful have habitual access, schools other than those open only to the institute's own members and other works of religion or charity entrusted to religious, whether these be spiritual or temporal. He can do this at the time of the pastoral visitation, or in a case of necessity.

§ 2. If the diocesan Bishop becomes aware of abuses, and a warning to the religious Superior having been in vain, he can by his own authority deal with the matter.

SOURCES: § 1: cc. 344 §§ 1 et 2, 512 § 2,2°, 1382; CodCom Resp., 8 apr. 1924; *CD* 35: 4; *ES* I: 25 § 1, 38, 39 § 2
§ 2: cc. 618 § 2,2°, 619; *ES* I: 25 § 1; 38

CROSS REFERENCES: cc. 134 § 3, 678 § 1

COMMENTARY

Velasio De Paolis, cs.

Right of the diocesan bishop to visit

The diocesan bishop can visit the houses and apostolic works of religious institutes in connection with the activities under his authority as stated in c. 678 § 1. Therefore, the churches and oratories to which the faithful have habitual access are subject to pastoral visitation. Simply put, it is sufficient that the faithful have free access to these places; they do not have a right to access.

The bishop also has the right to visit works of religion or charity, whether spiritual or corporal, that are entrusted to religious. He may also

visit schools, except those open only to the institute's students, because in this case it would concern internal visitation of the institute.

Visitation is reserved to the diocesan bishop (c. 134 § 3), but he may delegate this task to others. Visitation can be usually included in a program of pastoral visitation, but may also occur in case of necessity.

CAPUT VI
De separatione sodalium ab instituto

ART. 1
De transitu ad aliud institutum

CHAPTER VI
The Separation of Members from the Institute

ART. 1
Transfer to Another Institute

684 **§ 1. Sodalis a votis perpetuis nequit a proprio ad aliud institutum religiosum transire, nisi ex concessione supremi Moderatoris utriusque instituti et de consensu sui cuiusque consilii.**

§ 2. Sodalis, post peractam probationem quae ad tres saltem annos protrahenda est, ad professionem perpetuam in novo instituto admitti potest. Si autem sodalis hanc professionem emittere renuat vel ad eam emittendam a competentibus Superioribus non admittatur, ad pristinum institutum redeat, nisi indultum saecularizationis obtinuerit.

§ 3. Ut religiosus a monasterio sui iuris ad aliud eiusdem instituti vel foederationis aut confoederationis transire possit, requiritur et sufficit consensus Superioris maioris utriusque monasterii et capituli monasterii recipientis, salvis aliis requisitis iure proprio statutis; nova professio non requiritur.

§ 4. Ius proprium determinet tempus et modum probationis, quae professioni sodalis in novo instituto praemittenda est.

§ 5. Ut ad institutum saeculare aut ad societatem vitae apostolicae vel ex illis ad institutum religiosum fiat transitus, requiritur licentia Sanctae Sedis, cuius mandatis standum est.

§ 1. Perpetually professed members cannot transfer from their own religious institute to another, except by permission of the Supreme Moderators of both institutes given with the consent of their respective councils.

§ 2. On completion of a probationary period of at least three years, the member can be admitted to perpetual profession in the new institute. A member who refuses to make this profession, or is not admitted to do so by the competent Superiors, is to return to the original institute unless an indult of secularisation has been obtained.

§ 3. For a religious to transfer from one autonomous monastery to another monastery of the same institute, federation or confederation, the consent of the major Superior of both monasteries and of the chapter of the receiving monastery is required and is sufficient unless the institute's own law has established further conditions. A new profession is not required.

§ 4. The institute's own law is to determine the time and manner of the probation which must precede the member's profession in the new institute.

§ 5. To transfer to a secular institute or to a society of apostolic life, or to transfer from these to a religious institute, the permission of the Holy See is required and its instructions are to be followed.

SOURCES: § 1: c. 632
§ 2: cc. 633 §§ 1 et 2, 634
§ 3: cc. 632, 633 § 3
§ 4: c. 634
§ 5: c. 681

CROSS REFERENCES: cc. 127 § 1, 613 § 2, 615, 620, 643 § 1, 656, 1°, 657 § 1, 665 § 1, 685, 686, 688, 690 § 1, 691

685 **§ 1. Usque ad emissionem professionis in novo instituto, manentibus votis, iura et obligationes quae sodalis in priore instituto habebat, suspenduntur; ab incepta tamen probatione, ipse ad observantiam iuris proprii novi instituti tenetur.**

§ 2. Per professionem in novo instituto sodalis eidem incorporatur, cessantibus votis, iuribus et obligationibus praecedentibus.

§ 1. Until profession is made in the new institute, the rights and obligations of the member in the previous institute are suspended, but the vows remain. From the beginning of probation, the member is bound to observe the laws of the new institute.

§ 2. By profession in the new institute the member is incorporated into it and the earlier vows, rights and obligations cease.

SOURCES: § 1: c. 633 § 1
§ 2: cc. 635, 636

CROSS REFERENCES: cc. 598, 654, 662-672, 684

COMMENTARY

Francisco J. Ramos, op.

1. *Transfer to another institute*

Canon 684 refers to a member in perpetual vows, not mentioning members in temporary vows. The latter are not covered by these canons, as it clearly appears in the text and therefore do not come within the prohibition or conclusions set forth here. Since universal law does not provide concrete rules for members in temporary vows, proper law could bridge the gap. It is unnecessary, however, not because they are permitted to freely transfer to another institute, but because one professed in temporary vows who concludes that the institute is really not for him can withdraw upon the expiration of his profession (cc 657 § 1 and 688 § 1), or if he wishes to do so sooner, he may request an indult to leave the institute (c. 688§ 2). He then can apply to enter another institute. If he does not like the new institute and wants to return to his former institute, the superiors can admit him (c. 643 § 1) and even dispense with the noviciate, pursuant to c. 690 § 1.

The canon's negative statement, "cannot transfer from their own religious institute to another," has been chosen to make clear that the transfer to another institute is extraordinary and must be requested and approved only in grave cases, by the concession of an indult, and is reserved to general superiors with the consent of their respective councils.

The religious himself must initiate the transfer process by presenting a petition to the general superiors of both institutes, stating the reasons why it should be granted.

The general superiors of both institutes, with the consent of their respective councils, have the power to grant the transfer. The intervention

of the Holy See is not required. In view of the gravity of the matter, the decision is not left only to the general superiors, but the consent of their respective councils is required pursuant to c. 127 § 1.

The causes of a transfer can be personal or institutional: (a) physical or mental health is one reason that could be ameliorated by transfer to the other institute; (b) the situation of the institute or origin, especially if it does not offer what the religious has a right to expect of it; or (c) a case of the vocational discernment process of the religious himself.

Paragraph 2 states the steps to be taken: "On completion of a probationary period of at least three years, the member can be admitted to perpetual profession in the new institute." Universal law requires only that the probationary period be at least three years before the person can be admitted to perpetual profession in the new institute. Within this broad framework established by universal law, "[t]he institute's own law is to determine the time and manner of the probation which must precede the member's profession in the new institute" (§ 4). Keep in mind that the purpose of the probation is that the institute and the religious are to confirm the person's suitability for the new religious life to be embraced. Universal law does not require a novitiate, but proper law could require it as part of probation.

Paragraph 2 also provides that after the probation period "[a] member who refuses to make this profession, or is not admitted to do so by the competent Superiors, is to return to the original institute." The text of the canon states that returning to the first institute is a duty and a right. It is a right because the superiors of the original institute cannot refuse to take him back for having tried to transfer to another institute pursuant to Church rules. And it is also a duty because the religious must return "unless an indult of exclaustration has been obtained" that is, an indult to leave the institute (c. 691). In these circumstances, voluntary or imposed exclaustration (c. 686) and permission to live outside the house of the institute (c. 665 § 1) may be useful and are possible.

Admission to profession in the new institute is up to the competent superior pursuant to universal law and proper law (c. 656), since the mere permission granted by the general superiors of the original institute to transfer from that religious institute to another does not necessarily mean acceptance by the new institute.

When the religious who has requested it is granted to transfer to another institute, *they are not obliged to profess in the new institute*. During the probation period or after its termination, the religious can decide to return to the original institute, which must receive him since he is still one of its members. If he decides to profess, he must request to do so pursuant to c. 657 § 1.

Paragraph 3 addresses the special case of transfer where a religious from an autonomous monastery transfers to another autonomous monas-

tery of the same institute, federation, or confederation. Note that § 3, in contrast to the general norm of § 1, deals with both the religious in perpetual and temporary vows.[1]

In this situation the consent of the major superiors of both monasteries "and of the chapter of the receiving monastery" is required and is sufficient "unless the institute's own law has established further conditions." The major superiors are those superiors who govern the monasteries. Those who govern independent houses, as well as those who govern monasteries, are, by law, major superiors (cc. 613 § 2 and 620).

The modality of probation is established by the proper law "unless the institute's own law has established further conditions." The distinguishing characteristic of this transfer is that "a new profession is not required" because it is within the same institute, federation, or confederation. Of course, the member need not repeat his novitiate. The effects of a transfer from an autonomous monastery to another in the same institute are the same as those for transfer cases in general as provided in c. 685.

What norms govern the transfer from one monastery to another that are not of the same institute, federation, or confederation? Paragraph 3 of c. 684 governs cases of transfer from one monastery to another not in the same institute, federation, or confederation.

Which general superiors and their respective councils can grant a transfer from one monastery to another? Although the *CIC* never speaks of an abbess as "a supreme moderator," it does so implicitly by considering an autonomous monastery a religious institute that "has no major Superior other than its own" (c. 615).

Paragraph 5 of c. 684 provides: "To transfer to a secular institute or to a society of apostolic life, or to transfer from these to a religious institute, the permission of the Holy See is required and its instructions are to be followed." The norm is found in the diversity between these institutes and religious institutes. Without passing judgment on secular institutes or societies of apostolic life (in fact, transfer from a secular institute or society of apostolic life to the religious institute also requires the permission of the Holy See), the canon discourages these transfers since such a decision should not be lightly made during a time of questioning the suitability of religious life.

The canon requires that a transfer follow the mandates of the Holy See. Therefore, the determination of the probationary period does not lie with the proper law, as in the preceding cases, but will be determined by the Holy See in the rescript issuing the indult.

1. Cf. CPITL, Reply of June 20, 1987, I, in *AAS* 79 (1987), p. 1249.

2. *Situation of the religious during the transfer*

Canon 685 governs the situation of the religious during the transition. Probation commences upon leaving the former institute for the new one and ends upon profession in the new institute, or upon returning to the old one, or on leaving the religious life. When the religious returns to the original institute, he may resort to exclaustration or a permission of absence, pursuant to the norms of the juridic institutes.

Until the profession in the new institute, the vows remain in force but the rights and obligations that the religious had in the original institute are suspended. The rights and obligations referred to here are those stated in cc. 662 through 672 and all other rights and obligations as a religious in universal law or the proper law of the institute, for example, the right to be heard and to vote. The religious does not lose his rights nor is relieved of his obligations, but they are suspended. He retains his rights, though suspended, not only because he might return, but because they still belong to him.

The canon refers to the rights and duties that the religious had when he was fully incorporated in the institute, because he continues having some rights and obligations beyond those in the moral order, as for example, the right to return to the institute. The proper law can give more concrete statements regarding the rights and obligations kept by the religious during the transfer. The two institutes should also seek an agreement on economic issues to avoid future problems that might lead to suffering and scandal.

From the first moment of probation the religious must follow the proper law of the new institute, whether constitutional or from other sources. This makes sense since, on one hand, the religious wants to embrace the new life expressed in the proper law of the new institute, and on the other hand, because living the reality of that new life will test his desire and ability to do so. Further, it will help to illuminate other problems that might have been the cause of his dissatisfaction with the first institute.

Paragraph 2 affirms that "[b]y profession in the new institute the member is incorporated into it," in consonance with c. 654: "[b]y the religious profession members make a public vow to observe the three evangelical counsels. Through the ministry of the Church, they are consecrated to God and are incorporated into the institute with the rights and duties defined by law." The text also provides that "prior vows, rights, and obligations cease," because they are not taken in the abstract, but with a way of observing the evangelical counsels according to the character and aims of each institute (c. 598). To avoid uncertainty, the canon bluntly states that prior rights and obligations cease. From the moment the religious joins the new institute, he no longer has obligations or rights in the former institute.

ART. 2
De egressu ab instituto

ART. 2
Departure from the Institute

686 **§ 1. Supremus Moderator, de consensu sui consilii, sodali a votis perpetuis professo, gravi de causa concedere potest indultum exclaustrationis, non tamen ultra triennium, praevio consensu Ordinarii loci in quo commorari debet, si agitur de clerico. Indultum prorogare vel illud ultra triennium concedere Sanctae Sedi vel, si de institutis iuris dioecesani agitur, Episcopo dioecesano reservatur.**

§ 2. Pro monialibus indultum exclaustrationis concedere unius Apostolicae Sedis est.

§ 3. Petente supremo Moderatore de consensu sui consilii, *exclaustratio* imponi potest a Sancta Sede pro sodale instituti iuris pontificii vel ab Episcopo dioecesano pro sodale instituti iuris dioecesani, ob graves causas servata aequitate et caritate.

§ 1. With the consent of his or her council, the supreme Moderator can, for a grave reason, grant an indult of exclaustration to a perpetually professed member for a period not exceeding three years. In the case of a cleric, the indult requires the prior consent of the local Ordinary where the cleric must reside. To extend this indult or to grant one for more than three years, is reserved to the Holy See, or, in an institute of *diocesan right, to the* diocesan Bishop.

§ 2. Only the Apostolic See can grant an indult of exclaustration for nuns.

§ 3. At the request of the supreme Moderator acting with the consent of his or her council, exclaustration can be imposed by the Holy See on a member of an institute of pontifical right, or by a diocesan Bishop on a member of an *institute of diocesan right*. In either case a grave reason is required, and equity and charity are to be observed.

SOURCES: § 1: c. 638
§ 2: c. 638
§ 3: SCRSI Normae, 19 ian. 1974

CROSS REFERENCES: cc. 37, 48, 127, 593, 607 § 2, 608, 657 § 1, 665, 688, 690 § 1, 694-696, 700, 1445 § 2, 1734

687 Sodalis exclaustratus exoneratus habetur ab obligationibus, quae cum nova suae vitae condicione componi nequeunt, itemque sub dependentia et cura manet suorum Superiorum et etiam Ordinarii loci, praesertim si de clerico agitur. Habitum instituti deferre potest, nisi aliud in indulto statuatur. Voce tamen activa et passiva caret.

Members who are exclaustrated are considered as dispensed from those obligations which are incompatible with their new condition of life. They remain dependent on and under the care of their Superiors and, particularly in the case of a cleric, of the local Ordinary. They may wear the religious habit, unless the indult specifies otherwise, but they lack active and passive voice.

SOURCES: c. 639; CodCom Resp. III, 12 nov. 1922 (*AAS* 14 [1922] 602)

CROSS REFERENCES: cc. 669, 686

COMMENTARY

Francisco J. Ramos, op.

1. *Departure from the institute*

A religious institute is a society whose members take vows and live a fraternal life in common as provided by proper law (c. 607 § 2). Therefore, the religious community must live in a legitimately constituted house under the authority of the superior (c. 608), and the religious are to reside in their own house and live a common life, not leaving it without permission of the superior (c. 665 § 1). Sometimes, however, living this way is very difficult and the form cannot be continued. The law provides various solutions: transfer to another institute, departure from the institute, or expulsion from the institute.

The *CIC* clearly distinguishes between departure from the institute (cc. 686–693) and expulsion of members (cc. 694–704). There are several ways to depart from the institute: (1) indult of exclaustration (cc. 686 § 1, 2° and 687); (2) imposed exclaustration (c. 686 § 3); (3) leaving the institute after the completion of the time of temporary profession (c. 688 § 1); (4) leaving the institute during temporary profession (c. 688 § 2); (5) subsequent nonadmission (c. 689); and (6) for a member professed in perpetual vows, an indult to depart from the institute (cc. 691–693).

Permission to live outside the institute's house (c. 665) does not constitute departure from the institute because there is no change of the religious' status in the institute, for he is only dispensed from the obligation to reside in his own religious house. Accordingly, the matter is not included among the ways of departing the institute.

2. *Indult of exclaustration*

The indult of exclaustration, taken literally, could make us think about permission to live outside of the cloister. Actually, the indult of exclaustration is the authorization granted by the competent superior through which the religious may live outside the houses of the institute and is exempted from obligations inconsistent with his new living situation while also being deprived of some rights.

Canon 686 § 1 empowers the supreme moderator to issue an indult of exclaustration, a power that had previously been reserved to the Holy See or local ordinary, depending on the case. Given the gravity of the matter, the supreme moderator's power is limited by the conditions required to exercise it. In the first place, the supreme moderator cannot issue an indult of exclaustration for more than three years. This is to say, the supreme moderator cannot grant the diminution of rights and obligations that the indult of exclaustration entails for more than three years, whether those three years are consecutive or comprise several shorter periods of time. Considering that the *CIC* expressed this negatively "for a period not exceeding three years" we may infer that the supreme moderator cannot even grant it after the religious had spent some time being fully integrated into the demands of religious life.

For the granting of the indult, the supreme moderator requires the consent of their council. Pursuant to c. 127, the consent of the council is required for the indult's validity, and the form of the consent given will be determined by universal and proper law.

"To extend the indult or to grant it for more than three years, is reserved to the Holy See, or in an institute of diocesan right, to the diocesan bishop." The Holy See does not have a time limit. Normally, it does not grant a period of more than another three years, except when the indult *perdurante necessitate* is granted. The diocesan bishop who concedes the exclaustration will normally follow this practice.

The diocesan bishop referred to in cc. 686 §§ 1 and 3 is not expressly specified. Keeping in mind the interpretation of the corresponding canons of *CIC*/1917 (c. 638)[1] and cc. 688 § 2 and 700, we infer that it is the bishop

1. CPI, Reply, July 24, 1939, in *AAS* 31 (1939), p. 321.

in whose diocese contains the house to which the person is assigned or attached.

For the granting of the indult of exclaustration, "grave reason" is required, because the obligations that are dispensed with, even temporarily, are grave obligations. It is up to the granting authorities to judge the gravity of cause. By way of example, we could think of family situations requiring the religious' presence, or for the exercise of some personal apostolic activity, or because of grave circumstantial difficulties in communal life. Naturally, the situations listed in c. 665 § 1 are not reasons for an indult of exclaustration since they can be resolved by granting permission to live outside the house of the institute without having to resort to exclaustration.

If the reasons that motivated the exclaustration end, the religious can and must fully reintegrate into the institute, and the superior who granted the concession can retract it.

The indult of exclaustration is not intended for religious in temporary vows, as it appears in the text of the canon "to a perpetually professed member." For those professed in temporary vows, there is no need for an indult of exclaustration because the period of temporary vows is a time in which the religious and the institute must discern the religious' vocation to live that life. The indult of exclaustration would defeat the purpose of this stage. If a religious in temporary vows, for grave reasons, had to leave his religious house and communal life, he could seek permission to live outside the institute's house, withdraw at the end of his profession (c. 657 § 1; c. 688 § 1), or request an indult to depart from the institute (c. 688 § 2). When the religious can return to the institute, the superiors can readmit him, dispense with the novitiate, and determine a suitable probationary period before the temporary profession of vows and the time of temporary profession required before perpetual profession (c. 690 § 1).

"In the case of a cleric, the indult requires the prior consent of the local Ordinary where the cleric must reside." The object of the consent of the supreme moderator's council is different from the object of the consent of the local ordinary. In the first case, it is the granting or not of the indult of exclaustration; in the second case, it is the possibility of residing in the territory. If in his place of residence the cleric receives the faculty of exercising the ministry and the faculty of a confessor, the relationship becomes closer; but the canon does not refer to this consent.

Paragraph 2 states that "[o]nly the Apostolic See can grant an indult of exclaustration for nuns." The express petition of these nuns being received, the resolution of the matter is the responsibility of the ecclesiastical authority. Given that the institutes of pontifical right—as in the case of nun's monasteries—depend immediately and exclusively on the Holy See regarding internal governance and discipline (c. 593), power to grant indults of exclaustration to nuns lies exclusively with the Apostolic See.

3. *Imposed exclaustration*

Paragraph 3 of c. 686 establishes that "exclaustration can be imposed." This type of exclaustration was not found in the *CIC*/1917, but the CICLSAL (formerly the SCRSI) incorporated it under the name "exclaustration *ad nutum Sanctae Sedis*." Imposed exclaustration was intended to respond to especially grave situations where a religious' personality and behavior made life in the institute very difficult but, on the other hand, still did not constitute facts making possible a dismissal process. Imposed exclaustration, then, is intended to protect the interests of the community in the face of difficult individuals whose personalities are a constant source of tension in the community. Likewise, it seeks to safeguard canonical equity and charity toward the individuals who are frequently victims of their own defects.

The difference between imposed exclaustration and the indult of exclaustration appears in the way exclaustration itself is qualified. The indult of exclaustration is a favor granted to the religious who requested it. In contrast, imposed exclaustration is requested by the supreme moderator with the consent of his council, and although it is not a penal sanction, it has an odious character, since it is imposed by competent authority on the individual and deprives him of some rights.

Imposed exclaustration also differs from expulsion or dismissal because of the different effects that they both imply and because of the procedures that must be followed in their prosecution.

There are also various causes that justify imposed exclaustration and expulsion or dismissal. The canon states that exclaustration may be imposed for "grave causes" without specifying more. Expulsion, however, is always for grave causes, external, imputable, juridically provable, expressly enumerated (c.696), and, in the cases of expulsion by proper law and automatic expulsion, the causes are restrictively enumerated (cc. 694 and 695). The grave reasons for which exclaustration may be imposed are also external, juridically provable, but not necessarily imputable. They are acts or omissions that make the individual's presence in community gravely harmful to the institute. On the other hand, there is no possibility of arriving at a solution of the problem by other means, such as permission to live outside the house of the institute (c. 665), the indult of exclaustration, or the indult to depart from the institute, all of which must be requested by the religious.

The general superior can request exclaustration only for grave causes "and equity and charity are to be observed." The seriousness of the consequences of imposed exclaustration demand that the measure be taken only for the common good and only after the causes are proved, the incorrigibility is continuous, and the individual is given a chance to defend himself.

The *CIC* does not furnish procedures to reach such certainty. It is inferred from the procedures CRIS usually applies, following the steps of c. 695, as modified to suit the case.

After the *Regimini Ecclesiae universae* established the possibility of appealing adverse administrative decrees that the affected party claimed to have damaged his rights (n. 106) to the Signatura, the SCRSI began to require more strictly that supreme moderators follow a procedure similar to dismissal[2] before asking the congregation to impose exclaustration on an individual. This has consistently been the practice up to the present.

The major superior (or general superior), after having heard his council, will consider if commencing the process to impose exclaustration is necessary, weighing the causes and all persuasive and corrective measures taken to solve the problem. It is not a judicial procedure but an administrative one, in which the rights of both parties—institute and individual—are sought to be protected.

The basic steps that must be taken are the following: (a) gathering or completing the evidence of the existence of cause; (b) giving notice to the religious; (c) giving the individual the chance to defend himself; and (d) a vote of the general council by secret ballot.

The acts or omissions causing the grave damage that the presence of the individual in the community implies for the institute may be proven through declarations of the interested parties, documents, witnesses, experts, direct examination of the facts, and presumptions.

The second step is to present the religious with the acts or omissions of which he is accused, and inform him of the measures being contemplated to be taken against him. The purpose of this step is to give the individual a chance to mend his ways in view of the gravity of the matter and to give him a chance to defend himself. The major superior, or the person delegated for the case, must communicate the inculpatory acts or omissions to the religious, as well as indicate the need to modify the behavior, and change what is expected of him. The admonition will explain the nature of the measure to the religious, if necessary, and will specifically point out that unless the changes are made, exclaustration will be imposed. The communication will also state the individual's right to defend himself before the major superior as well as before the supreme moderator.

Informed of the possibility of imposed exclaustration and causes on which it is based, the individual must be given the opportunity to defend himself, whether before the superior who made the admonition or before the supreme moderator. If the individual responds orally, the defenses will

2. SCRIS, "Exclaustración 'ad nutum Sanctae Sedis,'" Decision of January 19, 1974, in *Informationes SCRIS* 1 (1975), p. 76.

be taken down in writing and should be signed by him and by either a notary or two witnesses.

If the established time limit passes without the problem having been corrected, the supreme moderator, with the consent of his council, will decide whether to request the Holy See to impose exclaustration on the individual in question.

The supreme moderator will send the formal petition to impose exclaustration together with all the documents and acts of the case to the competent authority to impose the exclaustration. The file will contain the following: (a) a brief history of the individual; (b) the allegations against him and the proof of facts; (c) the efforts made by the superior to resolve the problem; (d) a certification that the religious has been duly informed of the proceeding; (e) proof that the individual was given the opportunity to defend himself, along with defenses and the value that the superior and the council gives them; and (f) the report of the council that considered the case.

In the case of a member of an institute of pontifical right, the Holy See is the competent authority that can impose exclaustration. In the case of a member of an institute of diocesan right, it is the diocesan bishop. The Congregations of the Roman Curia in charge of these cases are the Congregation for Institutes of Consecrated Life and the Societies of Apostolic Life (*PB* 108) and the Congregation for the Eastern Churches (*PB* 58). In the case of an institute of diocesan right present in various dioceses, the competent diocesan bishop is the bishop in whose diocese is located the house to which the religious is assigned or attached.

Imposed exclaustration is a singular decree whereby, in accordance with the norms of law and for a particular case, a decision is made that, by its nature, does not presuppose a petition of interest (c. 48). It is a decree in a commisorial form, for its application to the individual is commended to another, usually the individual's major superior. To execute the exclaustration is nothing more that to put into play the necessary conditions for its practical application, which, specifically, consist of conveying the decree to the individual according to established norms.

To properly carry out an imposed exclaustration, the religious must have been notified by transmitting the written decree of imposed exclaustration and the act of execution (c. 37). For the act of notification to be legitimate, a written record must be made, in which the act of notification is made expressing the date and place of notification, and it must be signed by the individual, by the notifying person, and by a notary or two witnesses.

The individual may have recourse against the decree that imposes exclaustration pursuant to c. 700 and he may have recourse before the STAS pursuant to c. 1445 § 2. The PCILT has clarified that the recourse of c. 700 should be presented, not before the Signatura, as normally happens

when challenging an act of the Dicasteries of the Roman Curia, but before the same congregation.[3] It is, then, the petition referred to in c. 1734.

4. *Effects of exclaustration*

The canonical effects of exclaustration are described in c. 687. The enumeration of these canonical effects suffers from a certain generality because it tries to cover the two kinds of exclaustration: the indult of exclaustration and imposed exclaustration, which are considerably different.

Regarding especially the indult of exclaustration, which is in response to a petition for exclaustration made by the religious, c. 687 provides that "[m]embers who are exclaustrated are considered as dispensed from those obligations which are incompatible with their new condition of life."

Regarding imposed exclaustration, it would have been more logical to state that it is the decision of competent authority that imposes the precept of living outside the house of the institute on the religious. But this expression was not used to avoid confusing exclaustration with permission to live outside a house of the institute.

Imposed exclaustration does not have a time limit, therefore the authority that imposes it must determine its duration. Exclaustration does not end just because the cause that occasioned it no longer exists, either by the will of the individual or by that of the religious superiors. It requires the intervention of the Holy See or diocesan bishop, as appropriate, who will decide to revoke the prior decision by another decree.

In both cases of exclaustration, the exclaustrated member "remains dependent on and under the care of their Superiors and, particularly in the case of a cleric, of the local Ordinary." The principal responsibility for the care of the exclaustrated member lies with the religious superiors. The exclaustrated one continues to be a member of his institute, although his obligations and rights are partially diminished, and if he is a cleric, he continues incardinated in the institute. The religious superior will see to it that the exclaustrated religious remains faithful to his vocation by fulfilling all the obligations compatible with his condition of life. The religious superior will watch out for the material situation of the exclaustrated religious, seeing to it that he has the basic necessities.

"Members who are exclaustrated are considered as dispensed from those obligations which are incompatible with their new condition of life," particularly those of a communal nature that cannot be carried out individually. The proper law usually specifies the relationships that the exclaustrated must maintain with the institute. The exclaustrated member is

3. Cf. CPITL, Reply, May 17, 1986, in *AAS* 78 (1986), p. 1323.

bound by all the other obligations since he continues to be a religious. This might seem unfair in the case of imposed exclaustration, for the member remains tied to a group of obligations and yet is deprived of some rights of great importance: concretely being able to reside in the religious house and having active and passive voice. Imposed exclaustration does have this odious aspect for the individual, but it is justified for the common good, which must be protected.

Considering the diversity of situations regarding exclaustration, especially between the indult of exclaustration and imposed exclaustration, the *CIC* allows that the exclaustrated member "may wear the religious habit or not" at his discretion. It sometimes may be the case that the religious can, because of some necessity, petition for exclaustration not to distance himself from the institute, but, for example, because a family situation may require his presence for more than the one-year-limit of permission to live outside a house of the institute. In those cases, for the spiritual comfort of the religious and the good of the ecclesial community in which he lives, he may wear the religious habit. The same is possible in imposed exclaustration cases, though it might be better in this case if he did not wear the habit. Therefore, the canon states "unless the indult states otherwise."

Exclaustration implies a certain separation from the institute, materially and in regard to his obligations, and accordingly, it is natural and appropriate that the *CIC* expressly states that the exclaustrated member will "lack active and passive voice" during exclaustration. Once reincorporated into the life of the institute, the proper law may require of the member a certain waiting period or some other proof before restoring to him active and passive voice.

5. *Qualified exclaustration*

CICLSAL sometimes allows "qualified exclaustration" as it has come to be called. Its characteristics are as follows: (a) exercise of the sacred ministry and use of the ecclesiastical habit are prohibited, and all clerical privileges and obligations, other than celibacy, are suspended; (b) during exclaustration the religious cleric can receive the sacraments as do the laity; (c) the religious shall promise in writing to provide for his own needs; and (d) he is to return to the congregation when the time granted in the indult has ended.

Qualified exclaustration is offered as a time of reflection for cleric religious who are thinking about leaving their vocation, with the purpose of allowing them reconsider their decision. For this reason, religious in qualified exclaustration remains under the special care of the local and religious ordinary.

688 **§ 1. Qui expleto professionis tempore ab instituto egredi voluerit, illud derelinquere potest.**

§ 2. Qui perdurante professione temporaria, gravi de causa, petit ut institutum derelinquat, indultum discedendi consequi potest in instituto iuris pontificii a supremo Moderatore de consensu sui consilii; in institutis autem iuris dioecesani et in monasteriis, de quibus in can. 615, indultum, ut valeat, confirmari debet ab Episcopo domus assignationis.

§ 1. A person who, on the completion of the time of temporary profession, wishes to leave the institute, is free to do so.

§ 2. A person who, during the time of temporary profession, for a grave reason asks to leave the institute can obtain an indult to leave. In an institute of pontifical right, this indult can be given by the supreme Moderator with the consent of his or her council. In institutes of diocesan right, and in the monasteries mentioned in can. 615, the indult must, for validity, be confirmed by the Bishop in whose diocese is located the house to which the person is assigned.

SOURCES: § 1: c. 637
§ 2: c. 638; *CAd* 14; SCR Decr. Religionum laicalium, 31 maii 1966, I, 3 (*AAS* 59 [1967] 362–364); SCRSI Decr. Cum superiores generales, 27 nov. 1969 (*AAS* 61 [1969] 738–739)

CROSS REFERENCES: *cc. 37, 59, 62, 63, 127 § 1, 615, 654, 657 § 1, 689*

689 **§ 1. Sodalis, expleta professione temporaria, si iustae causae affuerint, a competenti Superiore maiore, audito suo consilio, a subsequenti professione emittenda excludi potest.**

§ 2. Infirmitas physica vel psychica, etiam post professionem contracta, quae, de iudicio peritorum, sodalem, de quo in § 1, reddit ineptum ad vitam in instituto ducendam, causam constituit eum non admittendi ad professionem renovandam vel ad perpetuam emittendam, nisi ob neglegentiam instituti vel ob laborem in instituto peractum infirmitas contracta fuerit.

§ 3. Si vero religiosus, perdurantibus votis temporariis, amens evaserit, etsi novam professionem emittere non valeat, ab instituto tamen dimitti non potest.

§ 1. The competent major Superior, after consulting his or her council, can for just reasons exclude a member from making further profession on the completion of temporary profession.

§ 2. Even though contracted after profession, a physical or psychological infirmity which, in the judgement of experts, renders the member mentioned in § 1 unsuited to lead a life in the institute, constitutes a reason for not admitting the member to renewal of profession or to perpetual profession, unless the infirmity was contracted through the negligence of the institute or because of work performed in the institute.

§ 3. A religious who becomes insane during the period of temporary vows cannot be dismissed from the institute, even though unable to make a new profession.

SOURCES: § 1: c. 637
§ 2: c. 637; SCRSI Decr. Dum canonicarum legum, 8 dec. 1970, 5 (*AAS* 63 [1971] 319)
§ 3: SCR Resp., 5 feb. 1925 (*AAS* 17 [1925] 107)

CROSS REFERENCES: cc. 127 § 1, 657 § 1, 688

COMMENTARY

Francisco J. Ramos, op.

1. *Departure from the institute after having completed the time of profession*

Within the norms regarding religious profession, c. 657 § 1 states that once he has completed the time of temporary profession, "a religious who freely asks and is judged suitable is admitted to a renewal of profession or to perpetual profession. Otherwise, the religious is to leave." For its part c. 688 § 1 provides that "[a] person who, on the completion of the time of temporary profession, wishes to leave the institute, is free to do so." Without getting into the moral aspects, the *CIC* affords the religious the freedom of leaving the institute once the time of profession has run, without this freedom being conditioned by norms of particular law, for example, having to reimburse the institute for the investment in his formation.

2. *Indult for departing the institute during the temporary profession*

Permission to live outside the house of the institute implies only that the religious does not have to live in a house of his institute without, as provided by universal law, his rights and obligations being diminished. Exclaustration, on the other hand, means living outside a house of the institute and a curtailment of some obligations and rights. Abandonment of the institute implies the end of the relationship of rights and duties between the member and the institute.

If the religious wants to leave the institute during temporary profession, he must expressly request it (c. 59), for it is a case of the religious freely leaving the institute. The religious must have grave cause to request leaving the institute, for the bonds that bind are grave: "By religious profession members make a public vow to observe the three evangelical counsels. Through the ministry of the Church, they are consecrated to God and are incorporated into the institute with the rights and duties defined by law" (c. 654). The gravity of the cause will be evaluated by those responsible for deciding whether to grant the indult. Grave cause for petitioning to depart from the institute could be, for example, the member's belief that he is not suited for this kind of life or that he must respond to other moral demands. If none of the alleged motivating reasons is true, the exposing of something false in the petition will render the rescript invalid (c. 63).

The authority to issue the indult to depart the institute during temporary profession, "[i]n an institute of pontifical right" resides in the "supreme Moderator with the consent of his or her council." The consent of the council must be requested and given pursuant to c. 127 § 1. "In institutes of diocesan right and in the monasteries mentioned in c. 615, the indult must, for validity, be confirmed by the bishop in whose diocese is located the house to which the person is assigned." Confirmation is required for the validity of the indult, but this must be granted by the supreme moderator with the consent of his council.

The indult begins to take effect upon notification of the interested party, for it is given in a commissorial form, that is, by designating an executor of the indult (c. 62). The rescript that grants the indult to leave the institute must be written (c. 37). The petitioner may reject the indult upon its being communicated to him and, in such case, the indult becomes invalid. If later he wants to depart, he will have to request a new indult.

3. *Departure from the institute for not having been admitted to renew the profession or to make the perpetual profession*

Canon 657 § 1 establishes the right of the religious to be admitted to the renewal of his profession or to perpetual profession when, having completed the time for profession, he freely requests it and if he is considered suitable. For its part c. 688 § 1 establishes the right of the religious to leave the institute upon completion of his time of profession. Canon 689 establishes the institute's right to exclude him from further profession: "The competent major Superior, after consulting his or her council, can for just reasons exclude a member from making further profession on the completion of temporary profession."

Pursuant to proper law, the authority who can exclude the member from further profession is the competent major superior. The decision to exclude a religious from further profession is a grave one for the person and for the institute, therefore it is left in the hands of the major superior, who, pursuant to c. 127 § 1, must consult his council before making the decision.

To exclude a religious from further profession, just causes are required. Just causes to exclude him from further profession will be those facts or circumstances of the religious that make him unsuitable for the life he would embrace through profession. The facts or circumstances need not be culpable, since excluding him from further profession is not punishment for some offence. In fact, it is enough that the major superior judges the religious unsuitable in intellectual, moral, or physical aptitudes necessary for the religious life in that institute. The margin of discretion that universal law gives to the major superior is very broad. Particular law can provide more specific guidelines. In any case, the discretion is very broad, and the major superior must use it with a great sense of responsibility to avoid other motives becoming mixed up in a decision of such gravity. On the other hand, keep in mind that when there is doubt about suitability, definitive integration cannot be granted. And when it is morally clear that the member is not suitable, it is better not to delay the decision about definitive departure.

The nonadmission to renew profession or to be admitted to perpetual profession should not surprise the unaccepted member, since it is supposed that many times it would have been called to his attention that his manner or actions were not up to the institute's due expectations of him. Nevertheless, sometimes even after they have been appropriately warned, the excluded members act as though they could not have imagined such a decision.

It is possible to appeal the lawful major superior's decision not to admit the candidate to renewal of profession or to proceed to perpetual profession to the supreme moderator. Keeping in mind the *CIC* places the

decision in the hands of the competent major superior, with the advice of his council, the decision on whether to exclude him or not from further profession (c. 689 § 1) cannot be appealed on the merits of the decision. On the other hand, procedural defects could be appealed; for example, if it is established that a decision was taken without having consulted the council.

Regarding just causes, c. 689 refers expressly to illness: "Even though contracted after profession, a physical or psychological infirmity which, in the judgment of experts, renders the member mentioned in § 1 unsuited to lead a life in the institute, constitutes a reason for not admitting the member to renewal of profession or to perpetual profession" (c. 689 § 2). In these circumstances it is natural that experts must intervene to specify the nature of the illness and its relevance to the member's ability to live in the institute, but it is the major superior who is ultimately responsible for judging the existence of the just cause to admit the religious to renew his profession or to be admitted to perpetual profession. The expression of the canon "[e]ven though contracted after profession" never ceases to cause amazement. To understand it, keep in mind that to accept a candidate who is not apt for religious life results in damage to the institute and to the person himself, such that, though seemingly severe, it is in the end truly just. On the other hand, the statement should be taken into account that immediately follows: "unless the infirmity was contracted through the negligence of the institute or because of work performed in the institute," because in this case it would be unjust not to admit him to further profession.

The last part of the canon provides that "[a] religious who becomes insane during the period of temporary vows cannot be dismissed from the institute, even though unable to make a new profession" (c. 689 § 3). In this case it is clear that the religious, although he might have lucid moments, is not capable of making a new profession because he lacks sufficient use of reason. Nevertheless, for the same reason, the canon categorically affirms that he may not be dismissed from the institute even though it is foreseeable that, due to his mental condition, there will be many difficulties and much worry.

690 § 1. **Qui, expleto novitiatu vel post professionem, legitime ab instituto egressus fuerit, a Moderatore supremo de consensu sui consilii rursus admitti potest sine onere repetendi novitiatum; eiusdem autem Moderatoris erit determinare congruam probationem praeviam professioni temporariae et tempus votorum ante professionem perpetuam praemittendum, ad normam cann. 655 et 657.**

§ 2. **Eadem facultate gaudet Superior monasterii sui iuris cum consensu sui consilii.**

§ 1. A person who lawfully leaves the institute after completing the novitiate or after profession, can be re-admitted by the supreme Moderator, with the consent of his or her council, without the obligation of repeating the novitiate. The same Moderator is to determine an appropriate probation prior to temporary profession, and the length of time in vows before making perpetual profession, in accordance with the norms of cann. 655 and 657.

§ 2. The Superior of an autonomous monastery, acting with the consent of his or her council, has the same faculty.

SOURCES: § 1: c. 640 § 2; *RC* 38, I, II

CROSS REFERENCES: cc. 641, 643 § 1, 5°, 655, 657

COMMENTARY

Francisco J. Ramos, op.

1. *Readmission without the obligation to repeat the novitiate*

The hypothesis of c. 690 is the possibility of being readmitted without having to repeat the novitiate or the customary probation before profession. From the text of c. 643 § 1, 5°, regarding the invalidity of admission to the novitiate by "one who has concealed his or her incorporation in an institute of consecrated life or society of apostolic life," we gather that the fact of having been incorporated in an institute of consecrated life or society of apostolic life in itself does not constitute an obstacle for admission to the novitiate, thus beginning the process of reincorporation into the institute, following the other requirements of the law.

Here, it is a matter of the possibility of being "readmitted" that clearly means a new admission to the same institute of which the individual had formed a part. The motive for this norm is because the initiation to the spirituality and life of the institute are considered to have already taken place, which would not happen in the case of a different institute.

The possibility of this readmission without having to repeat either the novitiate or a probation before profession refers to "[a] person who legitimately leaves the institute," such that those who had left unlawfully may not enjoy this benefit, nor may those who have been expelled from the institute. Further, as is only natural, it is required that the member had left "after completing the novitiate or after profession." Finally, notwithstanding where the canon is located, the norm applies both to those who left after temporary profession or after perpetual profession. This was the reason for using the term profession without any other qualifier.[1]

Pursuant to the norms of the proper law (c. 641), the right to admit candidates to the novitiate rests with the major superiors, whether the candidate is entering for the first time or in cases of readmission. In contrast, the authority who can grant readmission without the obligation of repeating the novitiate and who determines the steps to be followed to reach definitive incorporation is "the supreme Moderator, with the consent of his or her council."

The canon provides in a general way that "[t]he same Moderator is to determine the appropriate probation prior to temporary profession, and the length of time in vows before making perpetual profession, in accordance with the norms of cc. 655 and 657." It is obligatory, then, that there be a probation period before temporary profession and some time between temporary and perpetual profession.

Various elements must be taken into account in determining the probation periods: the reason for the member's leaving; the time he spent outside the institute and how he lived; the reasons that moved him to return; and his physical and mental health. In every case, the time of temporary profession must be adjusted to the norm of cc. 655 and 657, that is, it cannot be less than a period of three years nor more than six years (c. 655), but it may be extended according to the proper law. On the other hand, the time for temporary vows may not exceed nine years (c. 657 § 2).

The status of a religious readmitted into the institute is as that of one who enters for the first time, save those requirements that this canon permits to be dispensed with. Previous profession does not count for the purposes of appointment to certain functions.

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1. *Comm.* 13 (1981), p. 336.

2. *Readmission in autonomous monasteries*

Canon 690 § 2 states the following: "The Superior of an autonomous monastery, acting with the consent of his or her council, has the same faculty [to readmit without obligation of repeating the novitiate and to determine the probation]." Clearly, then, the legislator grants the faculty of c. 690 to the superior of an autonomous monastery, who is the major superior, but the law never calls him supreme moderator.

On the other hand, the text of the paragraph undoubtedly makes us see that the superior of an autonomous monastery can exercise this faculty upon a member who had legitimately left the monastery after having completed the novitiate or even after profession, but not in the case of a religious who had left, under conditions required by the canon, from another monastery, though that monastery was of the same order, institute, or confederation.

691 **§ 1. Professus a votis perpetuis indultum discedendi ab instituto ne petat, nisi ob gravissimas causas coram Domino perpensas; petitionem suam deferat supremo instituti Moderatori, qui eam una cum voto suo suique consilii auctoritati competenti transmittat.**

§ 2. Huiusmodi indultum in institutis iuris pontificii Sedi Apostolicae reservatur; in institutis vero iuris dioecesani, id etiam Episcopus dioecesis, in qua domus assignationis sita est, concedere potest.

§ 1. A perpetually professed religious is not to seek an indult to leave the institute, except for the gravest of reasons, weighed before the Lord. The petition is to be presented to the supreme Moderator of the institute, who will forward it to the competent authority with his or her own opinion and that of the council.

§ 2. In institutes of pontifical right this indult is reserved to the Apostolic See. In institutes of diocesan right, the indult can be granted by the Bishop in whose diocese is located the house to which the religious is assigned.

SOURCES: § 2: c. 638; CodCom Resp. II, 24 iul. 1939 (*AAS* 31 [1939] 321)

CROSS REFERENCES: cc. 692, 693

692 **Indultum discedendi legitime concessum et sodali notificatum, nisi in actu notificationis ab ipso sodale reiectum fuerit, ipso iure secumfert dispensationem a votis necnon ab omnibus obligationibus ex professione ortis.**

An indult to leave the institute which is lawfully granted and notified to the member, by virtue of the law itself carries with it, unless it has been rejected by the member in the act of notification, a dispensation from the vows and from all obligations arising from profession.

SOURCES: c. 640 § 1; CodCom Resp. III, 1, 12 feb. 1922 (*AAS* 14 [1922] 662)

CROSS REFERENCES: cc. 37, 40–45, 62, 654, 691

693 **Si sodalis sit clericus, indultum non conceditur priusquam inveniat Episcopum qui eum in dioecesi incardinet vel saltem ad experimentum recipiat. Si ad experimentum recipiatur, transacto quinquennio ipso iure dioecesi incardinatur nisi Episcopus eum recusaverit.**

If the member is a cleric, the indult is not granted until he has found a Bishop who will incardinate him in his diocese, or at least receive him there on probation. If he is received on probation, he is by virtue of the law itself incardinated in the diocese after five years, unless the Bishop has rejected him.

SOURCES: c. 641; CodCom Resp. 2, 27 iul. 1942 (*AAS* 34 [1942] 241); *ES* I: 3 § 5; Signatura Sententia 20 maii 1978

CROSS REFERENCES: cc. 665 § 2, 696 § 1, 691, 692

COMMENTARY

Francisco J. Ramos, op.

1. *Indult to depart from the institute for a perpetually professed religious*

a) *Concept, causes, and procedure*

The departing of a member in perpetual vows is painful and in principle not desired. Canon 691 §1 reflects this by a negative statement: "[a] perpetually professed religious is not to seek an indult to leave the institute [previously called 'secularization'], except for the gravest of reasons, weighed before the Lord." The religious' responsibility to consider before God the gravity of the reasons for his requesting an indult to depart from the institute is emphasized. He must consider it in the presence of God before the Church, his institute, and himself.

The causes that bring a religious to ask for definitive departure from the institute are, in the end, skepticism about his own vocation or reluctance to continue in it. These can be motivated by many reasons, whether personal or stemming from the institution itself.

The existence and gravity of the causes should be evaluated also by all those who will participate in the granting of the indult. However, once the religious has decided to leave, there is not much leeway afforded to those who will participate in the granting or denial of the indult. When the

religious has maturely made the decision and comes to ask for the indult, the personal process is almost always irreversible.

Once the decision has been made, the member who requests the departure from the institute is to present the petition "to the supreme Moderator of the institute." It will honestly set forth in writing: (a) when and in what circumstances he took his vows; (b) the reasons for having taken vows; (c) how he has lived the vows, enumerating the important steps and circumstances of his religious life; and (d) why he wants to leave the institute at the present time.

The petition may be transmitted to the supreme moderator through the major superior, who is supposed to be familiar with the case and has done everything possible to have the situation not reach this moment. The major superior may send relevant information to the supreme moderator. In any case, the responsibility to evaluate and to complete the necessary documents before sending the petition on to the Holy See belongs to the supreme moderator and his council, not to the major superior and much less to his council.

The general superior, either personally or through his representative, must do the following: (a) gather all necessary or useful information; (b) complete the *curriculum vitae*; (c) solicit the judgments from the competent superiors regarding the religious at the time of his admission to the institute, and their judgment about his life in the institute; (d) report on his relationships with his superiors about his faithfulness to his religious commitments; and (e) indicate any possible psychological or physical problems of the individual.

The supreme moderator will send the petition of the religious and information gathered to the competent authority, with a statement of his opinion and that of his council.

It should be noted that a *votum* or opinion is required and not a decision, for that is reserved to the Apostolic See, who may or may not follow the opinion of the supreme moderator and his council. The *votum* and opinion of both the supreme moderator and his council are required, not just the *votum* of the former having heard his council, though both *vota* may coincide. The opinion of the supreme moderator and his council may disagree with the petition of the religious. In that case, the supporting reasons for their opinions must be clearly explained. They should also suggest the possible solution for the case.

"In institutes of pontifical right, this indult is reserved to the Apostolic See" (c. 691 § 2). The gravity of the matter and the ease with which permission to depart from the institute was sometimes obtained counseled to leave the granting of the indult only in the hands of the Holy See. The Dicasteries of the Holy See entrusted to grant the indult in the name of the Holy Father are the CICLSAL (*PB* 108) and the CEC (*PB* 58), according to the congregation to which the institute is subject.

"In institutes of diocesan right, the indult can also be granted by the bishop in whose diocese is located the house to which the religious is assigned." (c. 691 § 2) The diocesan bishop who can grant the indult is the bishop in whose diocese is located the house to which the religious is assigned, though the religious may, in fact, be in another diocese. Naturally, and the text clearly states, the indult can be granted by the Apostolic See.

b) *Effects and notification*

The indult to depart from the institute, "by virtue of the law itself carries with it, unless it has been rejected by the member in the act of notification, a dispensation from the vows and from all obligations arising from profession" (c. 692). Religious profession implies the following: by public vow embracing the evangelic councils, the consecration to God through the ministry of the Church, and the incorporation into the institute with the rights and duties determined by law (c. 654).

Canon 692 does not speak of the consecration to God through the ministry of the Church inasmuch as it is a spiritual effect, limiting itself to the juridical consequences of profession—the obligation to observe the three evangelical councils and all obligations stemming from profession, whether given by universal or proper law. The indult bears not only the dispensation of the obligations, but also the loss of the rights of the religious state and of those he had as a member of the institute.

The indult, aside from having to be "legitimately granted" must be "made known to the member," thus granting the possibility of his rejecting it (cc. 37 and 62). On the other hand, experience has demonstrated that giving a time limit to accept or reject the indult causes many difficulties because the religious who had requested it and had decided to leave the institute used to try to pressure the institute by claiming supposed rights, even before the civil authority, and threatening to reject the indult unless his demands were met. Accordingly, c. 692 provides that "[a]n indult to leave the institute which is legitimately granted and notified to the member, by virtue of the law itself carries with it, unless it has been rejected by the member in the act of notification, a dispensation from the vows and from all obligations arising from profession."

Notification consists of delivering the rescript issued by the competent authority or an authentic copy of the same to the member (c. 37). The fact of notification and the acceptance, or at least, that upon notification the indult was not rejected or, if appropriate, that it was rejected, will be duly recorded by an authentic document (c. 37). The document will indicate the place and date of notification and will be signed by the individual and countersigned by the executor and two witnesses. If the individual refuses to sign, that will be made clear in the document. The executor will perform his duty according to cc. 40–45 and all other norms regulating administrative acts.

2. *Indult to depart from an institute for a perpetually professed cleric*

Canon 692 requires that the indult be "legitimately granted." It will be legitimately granted if it complies with universal and particular law. Canon 693 provides one of those requirements: "If the member is a cleric, the indult is not granted until he has found a bishop who will incardinate him in his diocese, or at least receive him there on probation."

Therefore, if the member is a cleric, before the indult is granted, he must find a bishop who will incardinate him in his diocese or, at least, receive him on probation. For its part, the authority who grants the indult must verify that this requirement really has been met. Thus it is avoided having clerics, deacons, and presbyters not subject to any ordinary. In case the bishop who received him on probation does not admit him permanently or prolongs the probation period, the cleric cannot exercise his sacred orders until another bishop incardinates him or receives him on probation.

The text of the canon does not condition the validity of granting the indult on the fact that the cleric has found a bishop who will incardinate him in his diocese. But given the tone of the statement, "[i]f the member is a cleric, the indult is not granted" and given the practice of the Holy See, clearly the Holy See would not grant the indult to depart from the institute without the cleric in question having first found a bishop who would incardinate him in his diocese. If the indult has been granted, it remains suspended until the cleric finds a benevolent bishop to incardinate him.

When the religious cleric wants to leave the institute but to continue being a cleric and he has not found a benevolent bishop to incardinate him in the diocese, the Holy See often grants laicization *ad experimentum*. This is to say, the Holy See grants exclaustration to the religious for five years, but a benevolent bishop may incardinate him in his diocese at anytime by proper decree, thereby dissolving the vows and all ties the religious had with the institute.

The possibility that the bishop would receive the religious in his diocese, at least on probation, certainly will help him to find a bishop disposed to accept him because, not being a definitive acceptance, the rights of the diocese remain protected. The *CIC*, on the other hand, also protects the right of the cleric who has left a religious institute by means of a legitimately granted indult: "If he is received on probation, he is by virtue of the law itself incardinated in the diocese after five years, unless the bishop has rejected him" (c. 693).

If the bishop rejects him and he finds no other benevolent bishop, the religious must return to the institute. If he does not return and does not obtain permission, he will be considered illegitimately absent (cc. 665 § 2 and 696 § 1).

ART. 3
De dimissione sodalium

ART. 3
The Dismissal of Members

694 **§ 1. Ipso facto dimissus ab instituto habendus est sodalis qui:**
1° a fide catholica notorie defecerit;
2° matrimonium contraxerit vel, etiam civiliter tantum, attentaverit.

§ 2. His in casibus Superior maior cum suo consilio, nulla mora interposita, collectis probationibus, declarationem facti emittat, ut iuridice constet de dimissione.

§ 1. A member is to be considered automatically dismissed if he or she
1° has notoriously defected from the Catholic faith;
2° has contracted marriage or attempted to do so, even civilly.

§ 2. In these cases, the major Superior with his or her council must, after collecting the proofs, without delay make a declaration of the fact, so that the dismissal is juridically established.

SOURCES: § 1,1°: c. 646 § 1,1°
§ 1,2°: c. 646 § 1,3°
§ 2: c. 646 § 2; CodCom Resp. III, 30 iul. 1934 (*AAS* 26 [1934] 494)

CROSS REFERENCES: cc. 18, 194 § 1, 2°, 316, 751

COMMENTARY

Francis G. Morrisey, omi.

1. *Introduction*

The canons of the 1983 Code on the dismissal of religious apply to all religious—both men and women—whether they be in temporary vows or

in perpetual profession.[1] Before the *CIC*/1917, a solemnly professed member who remained incorrigible for a period of six months or more could be dismissed from the order following a judicial process where the canonical proof of the motives for dismissal was established. Nuns could be dismissed only with the authorization of the Holy See. Religious who were dismissed were not dispensed from their vows.

In religious congregations, conditions for dismissal were different, depending on whether the person was a cleric or a layperson, in perpetual vows, or in temporary profession. No juridical form was prescribed for the latter. However, in principle, a formal procedure was required in the case of a cleric or of a perpetually professed religious. The dismissal did not become effective until it was confirmed by the Holy See. Generally speaking, a dismissed religious remained bound by the obligations arising from profession.

This legislation was substantially incorporated into the 1917 Code and remained in effect until the decree of March 2, 1974.[2] The 1974 decree suppressed the judicial procedure for the dismissal of perpetually professed members in exempt clerical institutes and replaced it by the administrative procedure in effect for perpetually professed members of other institutes. This latter administrative procedure offered as many guarantees of justice as did the process and met the requirements of natural justice.[3]

The 1983 Code lists three possible forms of dismissal and their causes: automatic dismissal, mandatory dismissal, and facultative dismissal. It then describes the procedure to be followed in such cases and treats of the effects of legitimate dismissal. Canon 694, which we have commented on, regulates the automatic dismissal.

2. *The reasons for automatic dismissal.*

a) *Abandoning the Catholic faith*

A person who notoriously abandons the Catholic faith is first of all one who receives ordination (or the equivalent) in another church or ecclesial community, or who has made a public profession of faith in it, or has registered as a member. Second, it is a person who is an apostate from

1. For a study of the legislation under the CIC 17, cf. "Procedure To Be Followed in Expelling a Woman Religious with Perpetual Vows," in *Consecrated Life* 2 (1976), pp. 69–72; also cf. E. MCDONOUGH, "Separation of Members from the Institute," in J. HITE-S. HOLLAND-D. WARD, *A Handbook on Canons 573–746* (Collegeville 1985), pp. 221–273, especially pp. 252–266.
2. *AAS* 66 (1974), pp. 215–216.
3. This observation is contained almost literally in the work edited by the Canonical Committee of the Religious of France, *Directoire canonique. Vie consacrée et societés de vie apostolique* (Paris 1986), p. 263, *question* 102.

the faith, a schismatic, or a heretic (cf. c. 751). However, the simple fact that a person no longer practices the Catholic religion on a regular basis does not necessarily imply that this person has notoriously abandoned the Catholic faith.

It should be noted that the canon speaks of abandoning the Catholic faith, but not of leaving the Catholic Church. The wording can be compared with that found in cc. 194 § 1,2° and 316, which speak of abandoning the Catholic faith and abandoning the communion of the Church as justifying reasons for being deprived of an office or being dismissed from an association.

It seems reasonable to hold that abandoning the Catholic faith requires some type of formal act, similar to the one mentioned in the canons on marriage (cf. c. 1086 § 1 etc.). It is not necessary, though, that the act be in writing; it suffices that it be proven. However, since the canon could be considered penal in nature, it would be subject to a strict interpretation (c. 18). For this reason, we could conclude that a secret abandoning of the faith would not entail automatic dismissal because the canon requires that such an act be notorious, that is, known by a large number of persons.

b) *Civil marriage*

Canon 694 distinguishes two forms of marriage: one which has indeed been contracted, and the other which is attempted civilly.

In the context of this canon, the expression "contracted marriage" implies one that is recognized by the Church, for instance, a marriage entered into by a religious in temporary vows before obtaining a dispensation, since temporary profession does not constitute a diriment impediment to marriage.

A marriage will be considered to be "attempted" only, if there was a diriment impediment from which no dispensation was obtained beforehand (for instance, from the impediment arising from ordination to the diaconate, c. 1087, or from the impediment arising from a public perpetual vow of chastity in a religious institute, c. 1088). In these cases, since the marriage cannot be celebrated before the Church, there would have been only a civil marriage that, although it is not recognized by the Church as such, nevertheless has a number of juridical consequences such as dismissal. To help clarify the matter, the text could be compared with the prescription of c. 1071 § 1,3° that speaks of respecting natural obligations toward another party or toward children born of a previous union, such as a civil marriage; that indicates another consequence of an invalid marriage, or even of concubinage.

It should be noted, though, that the canon does not speak of concubinage, even if it were public, but of marriage that was either celebrated or contracted. In the case of concubinage, c. 695 § 1 provides the rules to be followed.

3. *The formalities to be observed*

While paragraph 1 indicated the causes for automatic dismissal, paragraph 2 spells out the practical procedure to be observed in such cases. The first step consists in collecting the proofs, such as a marriage or ordination certificate, the testimony of persons who are trustworthy, or the oral or written declaration of the religious in question. It would be not be correct to proceed simply on the basis of rumors or hearsay evidence.

It is the major superior, either the superior general or the provincial superior, depending on circumstances, who pronounces the dismissal. This is done after the council has been convoked. It is important to note that the canon does not speak of the superior and council proceeding collegially (as is the case in c. 696), or by vote. Those present are asked to verify the facts and make the appropriate declaration. So, there is no question of a formal vote, or of a decision as such; rather, it is a declaration that the person in question has been dismissed in accordance with the prescriptions of c. 694. Why is this so? Because the decision has already been made by the law itself.

In order to be able to prove the fact of dismissal, it suffices for it to be inscribed in the minutes of the general or provincial administration meeting. If possible, a letter should be sent to the former member and a copy kept in the archives. If it is the provincial superior who declares the dismissal, the general administration of the institute is to be notified.

Given present circumstances, we can see how important it is for an institute to make this declaration formally, not only to remove civil liability for the eventual acts of the dismissed member, but also to be able to state clearly at any given moment who is, or is not, a member of the institute and who are those for whom the institute has obligations.

695 **§ 1. Sodalis dimitti debet ob delicta de quibus in cann. 1397, 1398 et 1395, nisi in delictis, de quibus in can. 1395 § 2, Superior censeat dimissionem non esse omnino necessariam et emendationi sodalis atque restitutioni iustitiae et reparationi scandali satis alio modo consuli posse.**

§ 2. Hisce in casibus, Superior maior, collectis probationibus circa facta et imputabilitatem, sodali dimittendo accusationem atque probationes significet, data eidem facultate sese defendendi. Acta omnia a Superiore maiore et a notario subscripta, una cum responsionibus sodalis scripto redactis et ab ipso sodale subscriptis, supremo Moderatori transmittantur.

§ 1. A member must be dismissed for the offences mentioned in cann.1397, 1398 and 1395, unless, for the offences mentioned in can.1395 § 2, the Superior judges that dismissal is not absolutely necessary, and that sufficient provision has been made in some other way for the amendment of the member, the restoration of justice and the reparation of scandal.

§ 2. In these cases, the major Superior is to collect the proofs concerning the facts and the imputability of the offence. The accusation and the proofs are then to be presented to the member, who shall be given the opportunity for defence. All the acts, signed by the major Superior and the Notary are to be forwarded, together with the written and signed replies of the member, to the Supreme Moderator.

SOURCES: § 2: cc. 647 § 2,3°, 650 § 3; SCRSI Rescr., 25 nov. 1969, 5; 9 § 1; 14 § 3; SCRSI Decr. Processus iudicialis, 2 mar. 1974 (*AAS* 66 [1974] 215–216); SCRSI Litt. circ., 1975, II, III

CROSS REFERENCES: cc. 18, 1323

COMMENTARY

Francis G. Morrisey, omi.

1. *The causes for mandatory dismissal*

Canon 695 lists a number of cases where dismissal is mandatory. As was the case with c. 694, since this measure could be considered penal in

nature, a strict interpretation of c. 695 would be called for. Since the canon speaks of a delict, this term must be given the precise meaning it has in law. Thus, if any of the conditions necessary for a delict would be missing, the delict would not have been committed according to the spirit and the letter of the Code. For instance, if any of the conditions mentioned in c. 1323 were present, the penalty foreseen in c. 695 should not be applied. Among these conditions, we could mention the case where a religious acted under physical constraint, or was in a situation that could not have been foreseen or that could not have been opposed had it been foreseen. In such an instance, a penalty could not be imposed. Grave fear, to use another example, justifies in some instances exemption from a penalty (c. 1323,4°).

a) *Homicide and abduction* (c. 1397)

The first instance is voluntary homicide or abduction by force or by fraud. This case is rather rare.

b) *Abortion* (c. 1398)

A religious woman who has an abortion, or a religious man or woman who assists in procuring one would be subject to the prescriptions of c. 695 (see commentary on c. 1398). On January 19, 1988, the Commission for Authentic Interpretation of the Code replied that the term "abortion" applies not only to the premature ejection of a nonviable fetus, but also to its elimination by any means or at any stage of conception (*AAS* 80 [1988], p. 1818).

In such instances, it would be important to verify whether the three conditions required for the committing of a delict exist: serious matter, sufficient knowledge and full consent. If there is not full consent, or if the person acted under the effect of grave fear (cf. c. 1324 § 1,5°), the penalty foreseen by the law should be tempered, and, in such a case, dismissal would not be mandatory.

c) *Delicts against the sixth commandment*

Canon 1395 lists a number of sins against the sixth commandment of the Decalogue; some of these lead to mandatory dismissal, others do not:

— concubinage;

— external sins against chastity that cause scandal;

— external sins against chastity committed by force, by threats, or in public;

— sins against chastity committed with a minor under the age of sixteen.

In the two first instances—concubinage and external sins that cause scandal—the dismissal is mandatory, provided the religious is recognized to be responsible for the acts. In some cases, though, we must recognize that responsibility is diminished or even nonexistent because the act was

not committed with full consent, but results from a pathological condition that can be more or less serious. It could even happen that no sin was committed. In such a case, obviously, the dismissal could not be decreed.

As to sexual sins committed with young persons, and certain other sins (mentioned in c. 1395), dismissal is not mandatory if provision can be made in some other way for the amendment of the member, the restoration of justice and the reparation of scandal.

Today, in many parts of the world, much publicity is given to sexual delicts committed with minors, and especially with children under the age of sixteen. Secular society judges these cases quite severely and the perpetrator, once found guilty, is usually sent to prison. The difficulty for religious superiors is to determine whether the real cause of such actions is malice or a pathological state of mind. On the other hand, in the case of a pathology, if a priest has been found guilty and sent to prison, it will be very difficult afterwards to have him resume ministry. Parents and the faithful at large find it most difficult to forgive such offences.[1] However, taken alone, this practical difficulty does not justify a dismissal.

The Code is stricter in cases of concubinage, because, in practice, we are usually faced with a situation where the religious refuses to leave the partner. On the other hand, the other sexual faults mentioned in c. 1395 are often committed by human weakness and usually are not indicative of ill will. Because of this, superiors will be more broad-minded when evaluating such situations.

2. *The procedure to be observed*

Section 2 of c. 695 spells out the procedure to be observed. It should be noted that no mention is made of canonical warnings or admonitions. Of course, this does not mean that a superior could proceed to dismissal without first making sure that the member, before certain acts were committed, had been made aware of their penal effects or consequences. This being the case, it is a matter of gathering the proofs and showing that the facts were imputable (cf. c. 1321 § 1: "No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability").[2]

In the case of a pathology, imputability will be diminished in proportion to the gravity of the illness. The greatest difficulty that arises in apply-

1. Cf. CONFÉRENCE DES ÉVÊQUES CATHOLIQUES DU CANADA, "Recommandations du Comite ad hoc de la Conférence des évêques catholiques du Canada sur les cas d'agression sexuelle," in *Studia Canonica* 26 (1992), pp. 461–486, especially pp. 471–474, nos. 20–23.

2. Cf. E. MCDONOUGH, "A Gloss on Canon 1321," in *Studia Canonica* 21 (1987), pp. 381–390; M. HUGHES, "The Presumption of Imputability in Canon 1321 § 3," in *Studia Canonica* 21 (1987), pp. 19–36.

ing c. 695 lies in determining the degree of imputability. For this reason, when superiors cannot gather sufficient proof, they prefer not to act in such situations. The norms for imputability protect the member, even if there is a presumption of imputability when there has been an external violation of the law (c. 1321 § 3).

If it can be proven that the act was committed by fraud or by fault, the member is notified of the accusation and given the opportunity to present a legitimate defense (cf. c. 221 § 1: the faithful have the right to defend before a competent ecclesiastical forum those rights that they enjoy in the Church). The 1983 Code insists heavily on the right of defense,[3] and not only when treating matrimonial tribunals (cf. cc. 1598 and 1620), but also in other instances, such as in dismissal cases.

The canon does not state that the person in charge (judge, superior, etc.) must accept the arguments put forward by the accused member; rather, the arguments should be examined objectively to see whether the accused can explain the conduct in another way.

If it is a provincial superior who is examining the case, and if it is considered that imputability truly exists for the faults committed, and if the arguments against dismissal are not considered to be acceptable, the acts are signed and are countersigned by the notary. (Cf. c. 483 § 1; ordinarily, in religious institutes, the provincial or the general secretary, depending on the case, will be the notary.) If the person being dismissed is a priest, it seems that the notary must also be a priest (cf. c. 483 § 2).

The member who has been found guilty should sign the documentation. In the case of a refusal to sign, which often happens, the superior can make a notarized statement to this effect. The canon presupposes that the accused member has not only presented an appropriate defense, but has also been questioned. If the accused replied to the questions, the answers are to be faithfully consigned in writing by the notary. According to c. 698, the accused can communicate directly with the superior general without going through the provincial superior.

The acts of the case are then forwarded to the superior general who will decree the dismissal. Canons 699 and 700 describe the procedure to be observed by the general administration.

3. Cf., e.g., "Jurisprudentia Supremi Tribunalis Signaturae Apostolicae," in *Monitor ecclesiasticus* 111 (1986), pp. 141–151, 381–387.

696 § 1. **Sodalis dimitti etiam potest ob alias causas, dummodo sint graves, externae, imputabiles et iuridice comprobatae, uti sunt: habitualis neglectus obligationum vitae consecratae; iteratae violationes sacrorum vinculorum; pertinax inoboedientia legitimis praescriptis Superiorum in materia gravi; grave scandalum ex culpabili modo agendi sodalis ortum; pertinax sustentatio vel diffusio doctrinarum ab Ecclesiae magisterio damnatarum; publica adhaesio ideologiis materialismo vel atheismo infectis; illegitima absentia, de qua in can. 665 § 2, per semestre protracta; aliae causae similis gravitatis iure proprio instituti forte determinatae.**

§ 2. **Ad dimissionem sodalis a votis temporariis, etiam causae minoris gravitatis in iure proprio statutae sufficiunt.**

§ 1. A member can be dismissed for other causes, provided they are grave, external, imputable and juridically proven. Among such causes are: habitual neglect of the obligations of consecrated life; repeated violation of the sacred bonds; obstinate disobedience to the lawful orders of Superiors in grave matters; grave scandal arising from the culpable behaviour of the member; obstinate attachment to, or diffusion of, teachings condemned by the magisterium of the Church; public adherence to materialistic or atheistic ideologies; the unlawful absence mentioned in can. 665 § 2, if it extends for a period of six months; other reasons of similar gravity which are perhaps defined in the institute's own law.

§ 2. A member in temporary vows can be dismissed even for less grave reasons determined in the institute's own law.

SOURCES: § 1: cc. 647 § 2,1° et 3°, 651 § 1, 656, 2389
§ 2: cc. 575 § 1, 647 § 2; CodCom Resp. I,2°, 1 mar. 1921 (*AAS* 13 [1921] 177)

CROSS REFERENCES: cc. 18, 686 § 3

COMMENTARY

Francis G. Morrisey, omi.

1. *Possible causes for optional dismissal*

Canon 696 § 1 establishes a list—which is not exhaustive—of seven possible causes for dismissal. It also recognizes the possibility that other causes may be established in the proper law (but not necessarily in the constitutions) of the institute.

Some of the causes mentioned in the canon have been invoked in recent years by the Holy See in cases that became public. For instance, in the United States, on the occasion of ads placed in newspapers against the Church's position in relation to abortion and signed by a number of religious, those who did so were called to recant their position under pain of dismissal from the institute because of the scandal they caused.[1] The letter informing them of this obligation referred explicitly to c. 696 § 1.

Among the various causes listed, the easiest one to prove is illegitimate absence lasting more than six months. In such a case, it suffices to show that the religious in question is not living in the assigned religious house. When this cause is invoked, it is usually not necessary to refer to matters touching moral life or doctrinal convictions, as would often be the case when the basis for the dismissal is the fact that the member holds opinions that have been explicitly condemned by the Magisterium of the Church, or when a member continues to violate obligations arising from the vows.

Among these continued violations, we could mention, by way of example, to refuse an obedience without valid reasons, or the refusal to obey legitimate precepts.

2. *Conditions*

The canon explicitly states that four conditions must exist simultaneously for the legitimacy of the dismissal process: the cause must be serious, external, imputable and juridically proven.

Thus, if one of these conditions does not exist, it is forbidden to proceed with the dismissal. Once again, since we are dealing with material that is close to penal legislation, a strict interpretation would be justified (cf. c. 18).

1. Cf. *Letter* of the SCRIS of November 30, 1984, in *Origins* 14 (1984–1985), pp. 492, 515–516.

However, it often happens that it is difficult to prove imputability, as was the case for issues relating to sexual abuse (c. 695 § 1, see commentary). In some instances, the religious is not ill enough to be hospitalized, but is too ill to be fully responsible for actions. Such a person is disruptive, but does not wish to change (or perhaps cannot change). In these situations, when it is difficult to prove imputability, in place of having recourse to dismissal, superiors can ask the Holy See to impose exclaustration on the religious in question (cf. c. 686 § 3).[2]

The juridical proof of the facts can be established by the declarations of witnesses, by documents (letters, bank accounts, etc.), and sometimes even by the admission of the accused who wishes to justify such actions. We should keep in mind the prescription of c. 1573 that the deposition of one witness does not constitute full proof, unless the person is qualified to give evidence on matters carried out in an official capacity, or when the facts and other circumstances lead inevitably to this conclusion.

3. *The particular situation of those in temporary profession*

Section 2 of c. 696 foresees the possibility for the institute to establish in its proper law causes of lesser gravity that would be sufficient to justify the dismissal of members in temporary vows.[3] However, it seems that very few institutes have established a list of such causes.

In practice, rather than becoming embroiled in the dismissal procedures, institutes prefer to allow the time to lapse and then refuse admission to renewal of profession. But not admitting the person to a renewal of vows is not in itself a dismissal, because the institute is never obliged to accept as a member someone who is not judged to be suitable (cf. c. 657 § 1).

Finally, it would be important to note that since the procedures for the dismissal of a member in temporary vows are the same as those for a perpetually professed member, these must be faithfully observed in the case of a dismissal of a temporarily professed member.

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2. Cf. "Jurisprudentia Supremi Tribunalis Signaturae Apostolicae," in *Monitor Ecclesiasticus* 115 (1990), pp. 487–492. This decision indicates that the practice of the Holy See in the cases of imposed exclaustracion is to follow the norms for dismissal, but with less rigor, since the effects are not as serious. Also cf. E. MCDONOUGH, "Voluntary Exclaustration," in *Review for Religious* 51 (1992), pp. 461–468; idem, "Involuntary Exclaustration," ibid., pp. 625–631.

3. Cf. J.F. GALLEN, "The new can. 696 § 2, affirms...," in *Review for Religious* 43 (1984), p. 143. According to Fr. Gallen, a charge for which a member is not responsible is sufficient to warrant expulsion.

697 **In casibus de quibus in can. 696, si Superior maior, audito suo consilio, censuerit processum dimissionis esse inchoandum:**

1° probationes colligat vel compleat;

2° sodalem scripto vel coram duobus testibus moneat cum explicita comminatione subsecuturae dimissionis nisi resipiscat, clare significata causa dimissionis et data sodali plena facultate sese defendendi; quod si monitio incassum cedat, ad alteram monitionem, spatio saltem quindecim dierum interposito, procedat;

3° si haec quoque monitio incassum ceciderit et Superior maior cum suo consilio censuerit de incorrigibilitate satis constare et defensiones sodalis insufficientes esse, post quindecim dies ab ultima monitione frustra elapsos, acta omnia ab ipso Superiore maiore et a notario subscripta una cum responsionibus sodalis ab ipso sodale subscriptis supremo Moderatori transmittat.

In the cases mentioned in can. 696, if the major Superior, after consulting his or her council, judges that the process of dismissal should be commenced:

1° the major Superior is to collect or complete the proofs;

2° the major Superior is to warn the member in writing, or before two witnesses, with an explicit caution that dismissal will follow unless the member reforms. The reasons for dismissal are to be clearly expressed and the member is to be given every opportunity for defence. If the warning has no effect, another warning is to be given after an interval of at least fifteen days;

3° if this latter warning is also ineffectual, and the major Superior with his or her council judges that there is sufficient proof of incorrigibility, and that the defence by the member is insufficient, after fifteen days from the last warning have passed in vain, all the acts, signed by the major Superior and the notary, are to be forwarded, together with the signed replies of the member, to the supreme Moderator.

SOURCES: cc. 649, 650 §§ 1 et 3, 654, 656, 660, 661 § 3, 663, 664 § 2

CROSS REFERENCES: cc. 49, 51, 127 § 1, 201 § 2, 601, 1509 § 1, 1510

COMMENTARY

Francis G. Morrisey, omi.

With this canon begins the treatment of dismissal procedures in cases of optional dismissal. Those concerning admonitions are contained in this canon.

1. *The intervention of the council*

The council does not vote at this stage of the procedure. However, before beginning the process, the major superior must seek the advice of the councilors. According to c. 127 § 1, for the validity of the act, the superior must consult all of them, even those who are absent.[1]

The council intervenes on two occasions during this first phase of the process: first, when deciding whether to invoke the process; and second, to evaluate the incorrigibility of the member. This must be done before the documentation is forwarded to the superior general. If an institute is not divided into provinces, then it is obvious that the documentation is not forwarded elsewhere at this moment.

2. *The admonitions*

Canon 697 foresees at least two admonitions with a minimum of fifteen days between them. On the other hand, jurisprudence indicates that an interval of more than three months between the admonitions breaks the continuity of the intervention.[2] Since we are speaking of fifteen canonical days, time does not run against a person who is unaware of the right or cannot act (c. 201 § 2). For this reason, if the admonition is sent by mail, and taking into account possible postal delays, it is suggested that at least twenty-five days elapse between the first and the second warning.

The admonition ought to be made either in writing or orally before two witnesses. It is preferable that it be in writing so that later on the content and the object of the warning can be verified. The text can be given to the member in the presence of two witnesses if the member agrees to come to receive it. The Holy See does not seem to recognize as valid admonitions given over the telephone because of the impossibility of verify-

1. Cf. J. TORRES, "Interpretazione autentica dei canoni riguardanti la Vita consacrata," in *SCRIS informationes* 14 (1988), pp. 274–291, especially pp. 277–281.
2. Cf. "Procedure To Be Followed in Expelling a Woman Religious with Perpetual Vows," in *Consecrated Life* 2 (1976), p. 70.

ing the content.[3] On the other hand, if the member's address is unknown, the news bulletin of the institute could be used, or some other appropriate means.[4] Experience shows that in such instances religious wish to have very little to do with their superiors.

A number of elements are required for the validity of the admonition.

a) The cause for dismissal must be clearly indicated. For this reason, it is recommended that superiors keep a log, documenting what was done on a day-to-day basis to encourage the member to resume regular life. At the same time, this shows that the superiors spared no effort to assist the religious in trouble. The description of the cause for dismissal must be detailed enough to allow for an adequate response. It would not suffice to state: "regular disobedience or a similar phase or some other vague formula." Therefore, it would be important to indicate which acts of disobedience are being used as a basis for the action, if, of course, disobedience is the motive for dismissal. Since the document decreeing dismissal is the equivalent of a decree (c. 49), it must be motivated (c. 51). For the same reason, the decision of an ecclesiastical tribunal would be invalid if it did not contain the motives or reasons for the judgment (c. 1622,2°).

b) The admonition must require on the part of the religious an action that is verifiable. For instance, to report to such and such a house by a given date; to close down a bank account held personally; to cease performing a given action; to cease meeting a certain person. It is not enough to state: "I order you to live according to the spirit of the Constitutions and Rules of the Congregation" because it is not easy to prove whether such an order was observed or not. Finally, the order is given in virtue of the vow of obedience (c. 601).

c) The member's right of defense is to be clearly indicated. For this reason, it should be mentioned that the member is to answer the allegations within ten days (or more) by contacting the provincial superior or the superior general directly (cf. c. 698). It must be certain that the person received the admonition by mail or by other secure means (cf. c. 1509 § 1). A religious who refuses to accept the letter or to reply to it is considered to have been legitimately informed (cf. c. 1510).[5] In some cases, means recognized as valid in civil law could be used, for example, having a bailiff deliver the letter. However, this is not prescribed by canon law.

d) The admonition must contain an explicit threat of dismissal if the member does not observe its contents. The words used most often are: "failure to observe this precept *constitutes possible cause* for dismissal from the institute."

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3. Cf. ibid.
4. Cf. ibid.
5. For a somewhat different opinion, cf. E. McDONOUGH, *Separation of Members from the Institute*, in J. HITE-S. HOLLAND-D. WARD, *A Handbook on Canons 573–746* (Collegeville 1985), p. 266, n. 2.

3. *The member's response*

The member may present a response, either verbally or in writing. If it is done verbally, the deposition should be transcribed and signed by the member or the superior, and then notarized. If the response is in writing, it must be signed by the member. Generally speaking, an anonymous or unsigned letter would not be satisfactory since it is not always possible to identify the author.

The responses will be evaluated by the major superior and council. If the explanations put forward are judged to be satisfactory, the procedure comes to an end. However, if they are not, the next stage can be undertaken.

698 **In omnibus casibus, de quibus in cann. 695 et 696, firmum semper manet ins sodalis cum supremo Moderatore communicandi et illi directe suas defensiones exhibendi.**

In all the cases mentioned in cann. 695 and 696, the member always retains the right to communicate with, and send replies directly to the supreme Moderator.

SOURCES: c. 650 § 3

CROSS REFERENCES: —

COMMENTARY

Francis G. Morrisey, omi.

The right of defense

Canon 698 sets out what was mentioned above, but it mentions explicitly that the member has the right to communicate directly with the superior general, even if it was the provincial superior who issued the warnings. If the member chooses to communicate with the superior general, two options are available. The superior general can forward to the provincial superior the responses and explanations of the member, and the provincial would continue the process. Or, the generalate assumes responsibility for the rest of the process. In such a case, it would be good to have the opinion of the provincial superior and council as to the opportuneness of continuing the process of dismissal.

There can be no process behind the back of a member who is willing to cooperate. But, in the instance of a refusal to cooperate (which is often the case), the process can continue. It sometimes happens that the member refuses to cooperate with the provincial superior because of certain factors, but is willing to deal with the superior general. If the superior general considers the reasons legitimate, a transfer of province could be considered, or other measures taken to help the member improve (for instance, by becoming the personal superior of the member). At any rate, it is difficult to imagine how someone can accept to be subject to a person who cannot be tolerated. For this reason, a transfer is preferable. Sometimes, a change in superiors improves the situation. However, it should be noted that it rarely happens that only one provincial superior has been the source of difficulties in the case. Rather, there is usually a lengthy history indicating that steps should have been taken years ago, but were not, often because of circumstances beyond the superior's control.

699 **§ 1. Supremus Moderator cum suo consilio, quod ad validitatem saltem quattuor membris constare debet, collegialiter procedat ad probationes, argumenta et defensiones accurate perpendenda, et si per secretam suffragationem id decisum fuerit, decretum dimissionis ferat, expressis ad validitatem saltem summarie motivis in iure et in facto.**

§ 2. In monasteriis sui iuris, de quibus in can. 615, dimissionem decernere pertinet ad Episcopum dioecesanum, cui Superior acta a consilio suo recognita submittat.

§ 1. The supreme Moderator with his or her council are to proceed in a collegial fashion in accurately weighing the proofs, the arguments and the defense. For validity, the council must comprise at least four members. If by a secret vote it is decided to dismiss the religious, a decree of dismissal is to be drawn up, which for validity must express at least in summary form the reasons in law and in fact.

§ 2. In the autonomous monasteries mentioned in can. 615, the judgment about dismissal belongs to the diocesan Bishop. The Superior is to submit the acts to him after they have been reviewed by the council.

SOURCES: § 1: cc. 650 §§ 1 et 2,2°, 655 § 1, 665, 666
§ 2: cc. 647 § 1, 652 § 2

CROSS REFERENCES: cc. 119, 2°, 1378, 1481 § 1, 1526 § 2

COMMENTARY

Francis G. Morrisey, omi.

This canon regulates the intervention of the superior general and the council in the procedure.

1. *The composition of the council and its action* (§ 1)

For validity, the council must comprise at least four members. Since the superior is ordinarily not a member of the council, this means at least five persons will vote.[1]

1. Cf. the reply of May 14, 1984, in *AAS* 77 (1985), p. 771. The reply does not deal directly with the membership of the Superior in the council, though it clearly appears to presume that the Superior is not a member of the council and therefore does not have the right to vote.

The vote is collegial.[2] This means, according to c. 119,2°, that the proposal receiving the majority of votes of those present has the force of law, provided there was a quorum for the meeting. An absolute majority means more than one-half of the votes of those present and voting. Even if the superior general voted with the minority, the result is binding on all. This is the only case in the Code, outside of elections, where a collegial vote is prescribed. However, the proper law of institutes can establish other occasions where such a collegial vote would be mandatory.

Finally, it should be noted that the vote is to be secret. Therefore, the religious to be dismissed should not be told that the vote in favor of dismissal was unanimous; otherwise, the secrecy would not have been preserved.[3] It suffices to state that the majority vote was in favor of the dismissal.

2. *The decision and the decree*

Before voting, the superior general and council must evaluate very attentively the three elements of the case: the proofs, the arguments, and any defense presented.

As for proofs, we should recall that c. 1526 § 2 provides that facts brought forward and recognized by the religious in question do not have to be proven juridically. For this reason, if the religious admits to the accusations, supplementary proofs are not required. However, other elements of the file must be proven. Therefore, it would be most helpful to have the log prepared by the superior general available following discussions with the religious, especially in cases of incorrigibility. It is thus easier to demonstrate how the situation has lasted for some time. The facts brought forward must be verifiable and verified—once again, we can recall that rumors do not constitute proof.

The second element, the arguments, consists of those points raised by the provincial superior and council, or of other elements in the file. A canonist could be invited to help put the file in order, indicating clearly those canons or elements of law on which the decision is to be based.

The third element, the defense, consists of the responses and explanations given by the religious to be dismissed. Here, too, the intervention of a canonical advocate would be helpful (by analogy, cf. cc. 1481 § 1 and 1738).

In a certain way, we could compare the intervention of the superior general and council with that of judges in a tribunal. Obviously, we are not

2. Cf. D.J. ANDRÉS, "De collegio decernente dimissionem religiosorum," in *Commentarium pro Religiosis* 69 (1988), pp. 203–206.

3. Cf. idem, "De secreto suffragationis ad decidendam dimissionem religisorum," ibid., pp. 207–208.

dealing with a formal trial as described in *Liber* VII. Nevertheless, because of the analogy between the two situations, it is fitting to observe the same principles of equity, legitimate defense, evaluation of proofs, etc., as are found in a formal trial. Since this is not a formal trial, there is no question of an appeal to a second instance court against the decision. However, the possibility of recourse to the Holy See always remains available.

Like a tribunal sentence (cf. c. 1611,3°), the decision must describe, at least in summary fashion, the reasons in law and in fact upon which it is based. The reasons in law are drawn from the prescriptions of canons such as c. 696, for example. The reasons in fact are built up from the facts and arguments presented.

As c. 700 will note, for validity, the decree must indicate the right of the member who is dismissed to have recourse to competent ecclesiastical authority within ten days following receipt of the decree.

3. *The particular situation of autonomous monasteries* (§ 2)

In the case of monasteries that do not have another major superior other than their own moderator, and that are not associated with another institute in such ways that the superior of this institute has true authority over the monastery as determined in the constitutions, it is the diocesan bishop who is to make the decision about the dismissal (cf. c. 615).

The superior of the monastery will present the acts (i.e. the proofs), the arguments, and the defense, as well as the personal opinion of the superior and monastery council.

In such instances, there is no question of a collegial vote. The bishop alone makes the decision. However, before deciding, he may consult other qualified persons, especially the director of the office for religious if such exists in the diocese, to make certain that the proofs are well established.

As was the case with the superior general's decree, to be effective, the bishop's decree must be confirmed by the Holy See if the monastery is of pontifical right.

700 **Decretum dimissionis vim non habet, nisi a Sancta Sede confirmatum fuerit, cui decretum et acta omnia transmittenda sunt; si agatur de instituto iuris dioecesani, confirmatio spectat ad Episcopum dioecesis ubi sita est domus, cui religiosus adscriptus est. Decretum vero, ut valeat, indicare debet ius, quo dimissus gaudet, recurrendi intra decem dies a recepta notificatione ad auctoritatem competentem. Recursus effectum habet suspensivum.**

A decree of dismissal has no effect unless it is confirmed by the Holy See, to whom the decree and all the acts are to be forwarded. If the matter concerns an institute of diocesan right, the confirmation belongs to the Bishop in whose diocese is located the house to which the religious belongs. For validity the decree must indicate the right of the person dismissed to have recourse to the competent authority within ten days of receiving the notification of the decree. The recourse has a suspensive effect.

SOURCES: cc. 647 § 2,4°, 650 § 2,2°, 666; SCR Decl., 20 iul. 1923 (*AAS* 15 [1923] 457–458); SCRSI Decr. *Processus iudicialis*, 2 mar. 1974 (*AAS* 66 [1974] 215–216); SCRSI Litt. circ., 1975, II, III

CROSS REFERENCES: c. 103

COMMENTARY

Francis G. Morrisey, omi.

1. *The author of the confirmation*

In the case of a religious belonging to an institute of pontifical right, it is the Holy See that confirms the decree of dismissal.[1] According to an authentic interpretation of the canon, March 21, 1986,[2] this confirmation is to take place before the dismissed religious is notified of the contents.[3] Another official response, dated the same day (ibid.),[4] indicates that it is

1. Cf. J. GALLEN, "Who confirms the decree of dismissal of a nun of an autonomous monastery (c. 615)?" in *Review for Religious* 43 (1984), p. 143.
2. *AAS* 78 (1986), p. 1323.
3. Cf. J. TORRES, "Interpretazione autentica dei canoni riguardanti la Vita consacrata," in *SCRIS informationes* 14 (1988), especially pp. 281–284.
4. *AAS* 78 (1986), p. 1323.

to the CICLSAL that recourse against the decree must be addressed. Such recourse suspends the effect of the decree.[5]

In the case of an institute of diocesan right, the diocesan bishop confirms the decree. This is not necessarily the bishop of the place where the general administration of the institute is situated, but rather, the bishop of the domicile of the religious, that is, of the diocese where the house to which the religious is assigned is located (cf. c. 103).

The file to be forwarded to the Holy See for confirmation should contain the following:[6]

— a short biography of the religious being dismissed;

— documentation regarding repeated faults;

— a statement regarding efforts made by the superiors to assist the religious to amend wayward conduct;

— copies of the two admonitions indicating the facts and the threat of dismissal; likewise, proof that the admonitions were duly received;

— document demonstrating how the right of defense was respected; the replies received (or a declaration from the religious that there is nothing to add); and the evaluation of the response by the general administration;

— minutes of the meeting where the superior general council voted on the incorrigibility of the member[7]; and

— other useful documents.[8]

2. *The right of recourse*

For validity, the decree must indicate that the dismissed religious has ten days in which to lodge recourse to the Holy See.[9] Such recourse suspends the decree. Since we are speaking of canonical days (c. 201 § 2), time does not begin to run until the decree has been received.

5. Cf. R.A. HILL, "Clarification of Dismissal: Canon 700," in *Review for Religious* 46 (1987), pp. 782–786.

6. For a list of the elements which are to be verified in the process, cf. E. MCDONOUGH, "Separation of Members from the Institute," in J. HITE-S. HOLLAND-D. WARD, *A Handbook on Canons 573–746* (Collegeville 1985), p. 265.

7. A decision of the Apostolic Signature says that it is not necessary that the members of the council sign the decree: what counts is the consent of the council. Cf. *Monitor Ecclesiasticus* 113 (1988), pp. 175–180.

8. Cf. "Procedure To Be Followed in Expelling a Woman Religious with Perpetual Vows," in *Consecrated Life* 2 (1976), pp. 71–72.

9. Cf. E. MCDONOUGH, "Communicating an Indult of Departure," in *Review for Religious* 51 (1992), pp. 782–788.

The decree should not be communicated to the religious before being confirmed by the Holy See.[10] This procedure is advantageous because it avoids the awkward situation of finding the decree to be invalid because of a procedural defect after it has been communicated.

The religious having recourse can bring up other arguments to be evaluated by the Holy See. One who refused to cooperate during the hearings can still intervene at this stage. In the light of new proofs brought forward, the decision could even be reversed. If the decision is confirmed, the religious can have recourse to the Apostolic Signatura.[11]

3. *The effects of the recourse*

Canon 700 provides that recourse against the decree of expulsion. A parallel canon considers the effects of an appeal in the case of a formal process; this appeal likewise suspends the execution of the sentence (c. 1638). In some cases, recourse does not suspend the effect of a decree (cf. c. 1736 § 2), but such is not the case here. While the case is progressing, the member retains all rights in the institute and remains subject to all the obligations.

10. Cf. D.J. ANDRÉS, "De recursu contra decretum dimissionis suscipiendo a CRIS (c. 700)," in *Commentarium pro Religiosis* 68 (1987), pp. 286–293.

11. Cf. the cited official reply of March 21, 1986, in *AAS* 78 (1986), p. 1323. Also cf. D.J. ANDRÉS, "De notificatione decreti dimissionis Religioso dimisso, post Sanctae Sedis confirmationem (c. 700)," in *Commentarium pro Religiosis* 68 (1987), pp. 276–286.

701 **Legitima dimissione ipso facto cessant vota necnon iura et obligationes ex professione promanantia. Si tamen sodalis sit clericus, sacros ordines exercere nequit, donec Episcopum inveniat qui eum post congruam probationem in dioecesi, ad normam can. 693, recipiat vel saltem exercitium sacrorum ordinum permittat.**

By lawful dismissal both the vows and the rights and duties deriving from profession automatically cease. If the member is a cleric he may not exercise sacred orders until he finds a Bishop who will, after a suitable probation, receive him into his diocese in accordance with can. 693, or who will at least allow him to exercise his sacred orders.

SOURCES: cc. 641, 648, 672 § 2; *ES* I: 3 § 5

CROSS REFERENCES: cc. 285, 663, 665, 668, 670, 693

COMMENTARY

Francis G. Morrisey, omi.

The consequences of dismissal

1. *The cessation of rights and obligations*

Among the rights of members of institutes (see c. 670), in accordance with the constitutions, there exists that of receiving from the institute all that is necessary to fulfill the purpose of their vocation. This implies lodging, food, medical care, education, spiritual assistance, and so forth. Since the dismissed religious is no longer a member of the institute, there is no claim in this regard (cf. however c. 702). As such, the institute no longer has obligations toward the member who has been legitimately dismissed.

Among the obligations, there are those relating to common life (c. 665), observance of the vows (c. 668), living the life of the institute (c. 663), abstaining from certain activities (c. 285), and so forth.

2. *The special situation of a cleric*

Clerics are those who received the order of episcopacy, priesthood, or diaconate (cf. cc. 207 § 1 and 1009). More generally, the prescription of c. 701 applies to a priest dismissed from the institute, since there are relatively few religious who have been ordained permanent deacons.

The priest is not suspended, and could continue to celebrate the Eucharist privately. However, the canon appears to forbid any type of public ministry. The bishop who receives him in view of eventual incardination or on an experimental basis (c. 693) will grant the faculties necessary for the exercise of ministry. If the bishop withdraws the permission to exercise orders, the priest must find another benevolent bishop before being able to carry out public ministry.

703 **In casu gravis scandali exterioris vel gravissimi nocumenti instituto imminentis, sodalis statim a Superiore maiore vel, si periculum sit in mora, a Superiore locali cum consensu sui consilii e domo religiosa eici potest. Superior maior, si opus sit, dimissionis processum ad normam iuris instituendum curet, aut rem Sedi Apostolicae deferat.**

In a case of grave external scandal, or of extremely grave and imminent harm to the institute, a member can be expelled forthwith from the house by the major Superior. If there is danger in delay, this can be done by the local Superior with the consent of his or her council. The major Superior, if need be, is to introduce a process of dismissal in accordance with the norms of law, or refer the matter to the Apostolic See.

SOURCES: *cc.* 653, 668

CROSS REFERENCES: *c.* 679

COMMENTARY

Francis G. Morrisey, omi.

Dismissal of a religious from a religious house

Canon 703 considers the situation of grave scandal. The Latin uses the superlative *gravissimi nocumenti* to qualify the scandal being considered. This is really an exceptional case. If such occurs, the superior can give an order to the member to leave the house and even the territory.

Canon 679 has a parallel norm: "For the gravest of reasons the diocesan bishop can forbid a member of a religious institute to remain in his diocese, provided the person's major superior has been informed and has failed to act; the matter, must, however, immediately be reported to the Holy See."

It should be noted that in such instances the member is not dismissed from the institute and retains existing rights. Superiors could even decide that it would not be necessary to dismiss the religious from the institute if this person is now living elsewhere and there is little danger that the scandal will become public.

The notion of scandal is a relative one. Its gravity depends on the place, the persons involved, the nature of the act committed, etc. In some places, at certain times, because of the political or social climate, some

faults have greater social repercussions than would others. Thus, for instance, in North America much importance and attention is given to acts of sexual abuse of minors. In other places, such acts do not give rise to the same reactions.

If there is grave scandal, the canon foresees two possibilities: the superior can begin and proceed with the dismissal process or bring the matter to the attention of the Holy See. In the latter case, the matter will be handled administratively. This could be the case, for instance, if a sister became pregnant and the matter caused grave scandal among the people.

702 **§ 1. Qui ex instituto religioso legitime egrediantur vel ab eo legitime dimissi fuerint, nihil ab eodem repetere possunt ob quamlibet operam in eo praestitam.**

§ 2. Institutum tamen aequitatem et evangelicam caritatem servet erga sodalem, qui ab eo separatur.

§ 1. Whoever lawfully leaves a religious institute or is lawfully dismissed from one, cannot claim anything from the institute for any work done in it.

§ 2. The institute, however, is to show equity and evangelical charity towards the member who is separated from it.

SOURCES: § 1: c. 643 § 1
§ 2: c. 643 § 2; SCDF Normae, 13 ian. 1971, VI, 5 (*AAS* 63 [1971] 308); SCRSI Decl., 25 ian. 1974; SCRSI Litt. circ., 1975, IV

CROSS REFERENCES: —

COMMENTARY

Francis G. Morrisey, omi.

A member who leaves an institute legitimately or has been lawfully dismissed loses all rights arising from profession (c. 701).[1] It usually happens that a person who enters an institute is asked to sign a document, valid both in canon law and in civil law, recognizing that there is no right to compensation for services rendered. Today, because of the number of suits introduced by former religious to obtain assistance from the institute, most communities add "and for future considerations" because it sometimes happens that members who are departing do not ask for money for past services but to make certain that they have enough to live on in the future.[2] However, according to canon law, the institute is not obliged to provide this type of assistance because the religious profession does not give rise to the right to be lodged or fed for life unless the person remains a member of the institute.

According to the former law, the charitable subsidy given to a departing religious had as its purpose to enable that person to return home

1. Cf. L. RICCERI, "Il sussidio economico da concedersi ai Religiosi che lasciano il loro Istituto," in *SCRIS Informationes* 1 (1975), pp. 171–181.

2. Cf. R. MCDERMOTT, *Canon 702 §2. Equity and Charity to Separated Members*, in CANON LAW SOCIETY OF AMERICA, *Proceedings* 52 (1990), pp. 120–133.

and make a transition to a new state of life. However, it would be rather difficult to apply this reasoning today since many religious do not have a home to which to return. There is no question of them of going back.

The canon speaks of "equity" and "evangelical charity." It should be noted that the word "justice" was omitted intentionally, since in many countries the administration of justice is the prerogative of the secular tribunals, and the lawmaker wished to avoid giving malcontents the opportunity of using this canon to plead their case before the civil courts.

As to the amount of money to be given to a departing religious, many factors must be taken into consideration: the financial situation of the institute, the member's age, state of health, education received, the number of years in profession, the capacity of finding suitable employment, and so forth.

In this regard, many institutes offer a basic sum to each member who leaves the community. To this is added an additional amount for each year of profession. If the person does not have professional qualifications that would make it easier to obtain employment, or is unable to find work immediately, an additional sum can be added, according to circumstances. In some cases, institutes prefer to offer an interest-free loan that the former member will repay when convenient. At any rate, it is highly recommended that a clear policy be established in this regard so as to avoid painful situations later on. This policy can be inserted in the directory for temporal administration that each institute is to develop (see c. 635 § 2).[3]

A few practical comments could also be added, so as to avoid painful situations:

— persons who would be unable to earn their living should not be accepted into the community;

— the institute should be well informed of the possibilities of assistance available in the secular world so that they can be used to the fullest;

— the members should be given satisfactory professional training so that they can earn their living if they leave (for instance, university degrees or professional certificates or diplomas).

In larger dioceses, it might even be helpful if a central office were established to assist former religious to make the adjustment to secular life in a satisfactory manner.[4]

If, at some later date, a former religious became ill and were unable to provide for himself, the institute might be encouraged to receive him in its infirmaries in the name of Christian charity.

3. Cf. F. G. MORRISEY, "The Directory for the Administration of Temporal Goods in Religious Institutes," in *Unico Ecclesiae servitio. Etudes de droit canonique offertes à Germain Lesage, o.m.i.* (Ottawa 1991), pp. 267–285.
4. Cf. L. RICCERI, "Il sussidio...," cit., p. 180.

704 De sodalibus, qui ab instituto sunt quoquo modo separati, fiat mentio in relatione Sedi Apostolicae mittenda, de qua in can. 592 § 1.

In the report to be sent to the Apostolic See in accordance with can. 592 § 1, mention is to be made of members who have been separated in any way from the institute.

SOURCES: SCR Normae, 9 dec. 1948, 248–264

CROSS REFERENCES: c. 592

COMMENTARY

Francis G. Morrisey, omi.

Canon 592 provides that in order to promote closer union between institutes and the Holy See, each supreme moderator is to send a brief account of the state and life of the institute to the same Apostolic See, in the manner and at the time it requests. The SCRSI has determined that the report to be forwarded will be based on the one given by the superior general to the general chapter[1]. It is not necessary to prepare a new report; rather, an abstract of the one already presented suffices. If the institute does not hold general chapters, this report will be sent in every six years.

The report shall indicate the number of members who have left the institute, be it at the expiration of their temporary vows with a dispensation received from ecclesiastical authorities, or by reason of dismissal. Likewise, the number of members on exclaustration should be indicated.

If the number of those who leave the institute is proportionately too high, this could indicate to the Holy See that something is not right in the institute. It would be important to examine the situation to remedy what is not correct.

1. Cf. SCRIS, "Relazione periodica alla Santa Sede," in *Informationes SCRIS* 14 (1988), pp. 179–182: letters to the supreme Moderators of the ICL and SVA dated January 2, 1988.

CAPUT VII
De religiosis ad episcopatum evectis

CHAPTER VII
Religious Raised to the Episcopate

705 **Religiosus ad episcopatum evectus instituti sui sodalis remanet, sed vi voti oboedientiae uni Romano Pontifici obnoxius est, et obligationibus non adstringitur, quas ipse prudenter iudicet cum sua condicione componi non posse.**

A religious raised to the episcopate remains a member of his institute, but is subject only to the Roman Pontiff by his vow of obedience. He is not bound by obligations which he prudently judges are not compatible with his condition.

SOURCES: c. 657 §§ 1 et 2

CROSS REFERENCES: cc. 330-335, 368, 375-380, 390 § 2, 601, 607 §§ 2-3, 618, 654, 671, 381 § 2, 1191 § 1

COMMENTARY

Domingo J. Andrés, cmf.

Canons 705–707 regulate the peculiar situation in which the religious who is appointed bishop comes to find himself[1] with respect to his principal (practical and juridical) roles. In each one of the dispositions the drafter has posited two basic criteria: *a*) positively, by looking for a point of convergence and compatibility between the episcopate and the condi-

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 649–652; idem, "De religioso episcopo carente voce activa et passiva in proprio Instituto (cc. 705 y 707)," in *Commentarium pro Religiosis et Missionariis* 58 (1987), pp. 294–308.

tion of being a religious that converge in the same person; and *b*) negatively, by avoiding conflicts and interference, while it is being implicitly understood that predominance must be given to the episcopate.

1. The terms of the canon "the religious raised to the episcopate" clearly indicate that the case of a bishop's ingress into the religious life, and the lesser but complementary case of the access of a religious to other ecclesiastical offices lower than the episcopate, both remain outside the field of regulation.

It must be supposed that the norm of c. 671, by virtue of which "religious are not to undertake tasks and offices outside their own institute without the permission of the lawful Superior," is automatically abrogated *ad casum* since the appointment of the bishop proceeds from the Roman Pontiff. Supposedly the obligations that were assumed on the occasion of religious profession, during which many institutes used to include the renunciation of ecclesiastical ranks and offices, will also cease. This practice has now disappeared since it is unnecessary in light of pontific appointment (cf. cc. 375, 376, 381 § 2 respectively, for the concept and possible variants of episcopal designation.).

2. The canon continues "Remains a member of the institute." This means that the member does not lose the status he acquired by profession nor does he exit the institute; neither does he stop being professed or incorporated in it. The rights and obligations springing from his profession are not suspended except to the extent that he is affected by the following provisions regarding the vows of obedience and poverty.

His situation cannot be compared with that of the absent member, even though it coincides in some ways, because it would not be favorable to the bishop; nor much less with that of the exclaustrated; nor *a fortiori* with that of former apostates and fugitives.

3. "He is subject only to the Roman Pontiff." Since it is a question of a religious whom the Pope, as Primate, calls to his direct service and dependence to exercise the charisms of governance, teaching, and sanctification of the people of God in communion with him and with the rest of the bishops, once he is consecrated bishop and made a member of the Bishops' College.

This direct and exclusive subordination exists in virtue of the vow of obedience, which he has already professed and has not lost. The vow also encompasses obedience to the Roman Pontiff (cf. c. 590 § 2) which is now added inasmuch as he is a bishop (given the Roman Pontiff's function as pastor of the Church) and which takes away the remaining effects of submission to the Superior members of the institute.

4. He is not constrained by certain incompatible obligations: they are not specified because freedom from their obligation is entrusted to the

personal discretion of the bishop himself, who will not feel obligated by those duties that impede his work as pastor.

It is exceedingly difficult, in practice, to locate with precision the incompatible obligations, even while being able to presuppose with certainty that the two essential extremes from which we start are *fraternal life*, whose obligations he will, of necessity, have to relieve himself, and the *evangelical council of chastity*, whose obligations obviously he will have to keep fulfilling, if possible with redoubled motivation.

Although the canon only refers to duties, by reason of equilibrium and correspondence, he will not able to exercise some rights: especially those of course whose practice is incompatible with the fulfillment of the pastoral commitments inherent to the office.

5. The lack of active and passive voice. Historical polemics aside, no doubt exists at all that the religious bishop lacks both voices, the two being conceived as right and as duty at the same time, and likewise attributable from the time when he works as bishop to when he ceases his work and retires. The CPI, to the question "Utrum Episcopus religiosus gaudeat in proprio Instituto voce activa et passiva," has responded with a laconic "Negative," which leaves no doubt about what we have affirmed.[2] It seems to us that there exist abundant convergent motivations and considerations that guarantee the certitude of the *Response* of the CPI. Moreover, the doctrine was already the majority opinion that sustained the same thing when the *CIC*/1917 was in force.

6. The case of the religious Prelate Auditor of the Roman Rota is not comparable to that of the religious bishop. This old question, akin to those posed by the figure of the religious bishop, has been clearly settled by the PCILT declaring the impossibility of such comparison in any sense, with the general exception, which is applicable to other ecclesiastical offices entrusted to religious, concerning all that pertains to the office itself.

In effect, to the question, "Utrum religiosi, Romanae Rotae Praelati Auditores nominati, exempti habendi sint ab Ordinario religioso et ab obligationibus, quae e professione religiosa promanant, ad instar religiosorum ad Episcopatum evectorum," the PCILT has responded in a qualified way: "Negative ad utrumque, salvis iis quae ad exercitium proprii officii spectant," which also leaves no room for doubt.[3]

2. *AAS* 78 (1986), pp. 1323-1324.
3. *AAS* 80 (1988), p. 1819.

706 **Religiosus de quo supra:**

1° si per professionem dominium bonorum amiserit, bonorum quae ipsi obveniant habet usum, usumfructum et administrationem; proprietatem vero Episcopus dioecesanus aliique, de quibus in can. 381, § 2, acquirunt Ecclesiae particulari; ceteri, instituto vel Sanctae Sedi, prout institutum capax est possidendi vel minus;

2° si per professionem dominium bonorum non amiserit, bonorum, quae habebat, recuperat usum, usumfructum et administrationem; quae postea ipsi obveniant, sibi plene acquirit;

3° in utroque autem casu de bonis, quae ipsi obveniant non intuitu personae, disponere debet secundum offerentium voluntatem.

In the case of the religious mentioned above:

1° if he has lost the ownership of his goods through his profession, he now has the use and enjoyment and the administration of the goods he acquires. In the case of a diocesan bishop and those mentioned in can. 381 § 2, the particular church acquires their ownership; in the case of others, they belong to the institute or the Holy See, depending on whether the institute is or is not capable of possessing goods;

2° if he has not lost the ownership of his goods through profession, he recovers the use and enjoyment and administration of the goods he possessed; what he obtains later he acquires fully;

3° in both cases, however, any goods he receives which are not personal gifts must be disposed of according to the intentions of the donors.

SOURCES: 1°: c. 628,1°
2°: c. 628,2°
3°: c. 628,3°

CROSS REFERENCES: cc. 121-123, 326 § 2, 360-361, 368-374, 376, 616 § 1, 654, 668, 707, 954, 1303 § 2, 1310 § 2

COMMENTARY

Domingo J. Andrés, cmf.

The norm[1] regulates the fundamental implications concerning the social status of the religious bishop with respect to his vow of poverty. It has been compiled and determined according to the following criteria: *a*) consideration of the peculiar situation of the bishop who, having to live by his own means, logically should be relieved of some of the religious obligations regarding poverty; *b*) respect for the type of poverty that he professed, which is quite varied among the institutes; and *c*) conformity with the wishes of those who donate and bequeath. The specific situations that the canon envisions and regulates are the following:

1. *Loss of the ownership of his goods.* If, according to c. 668 §§ 4 and 5 concerning the nature of the institute to which he belongs, he has had completely to renounce his property and lose the capacity to acquire and possess property and thus has lost all ownership of his goods then, despite this loss, the following applies:

a) he acquires the use, enjoyment, and administration of all the property he acquires while he is a bishop. In other words, one of the capacities that he had lost with religious profession is restored to him, or he could be seen as dispensed from its fulfillment or being subject to its effects. The intent is obvious: he must live on his own according to the decorum and dignity of his status; he must look out for his future, old age, unforeseen events, retirement, etc;

b) on the other hand, with regard to property, the norm distinguishes the following: when the diocesan bishop and those equivalent in law (territorial prelate, territorial abbot, apostolic prefects and vicars, permanent apostolic administrator—cf. cc. 381 § 2 with 368—and military ordinary) take ownership of property for their particular churches, c. 668 § 3 is commuted. This is just, for although they have lost ownership and capacity regarding property, they represent and substitute for the Church to which they are obligated. On the other hand, when those who are not diocesan bishops nor equivalent to them in law, acquire property for their respective institute or for the Holy See, if the institute is capable of possessing goods, then the requirements of c. 668 § 3 continue to be met. The motivation again appears to be fair, but for reasons different from the prior case. By not having their own particular church and thus not being obligated to any particular church, they can pursue more bonds to the institute, or they can be obligated more directly to the Holy See.

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 625–655.

2. *Conservation of the ownership of his goods*. Without distinguishing between diocesan and titular bishops, but distinguishing between administration, use, and enjoyment, on the one hand, and ownership, on the other, the norm provides that:

a) all recover the use, enjoyment, and administration of goods they might have had while living in the institute, that is, they are dispensed from c. 668 § 1. The reason is obvious: the goods were and are theirs, but with their new status, they will need the goods for their own sustenance and provision, and given that the bishop lives and works outside the institute, it is equitable to exempt the institute from these responsibilities;

b) on the other hand, all acquire ownership for themselves of goods that they obtain while being bishops, that is, they are dispensed from c. 668 § 3. The reason is identical: they have to fend for themselves and look out for their future.

3. *The goods received not in regard to his status as bishop*. In this case, whether or not they are diocesan bishops and whether they keep ownership of their goods, if the goods are acquired *non intuitu personae* it is required that the wishes of those who donate or bequeath must always be respected. The reason is obvious: at the moment the property is accepted a kind of juridical situation arises in which the will of the donor prevails over any other possible disposition of the goods. No matter how urgent the reason not to honor such wishes, the will of the donor prevails over the very necessities of the bishop, who may not make use of the donated goods for his advantage against the wishes of the donor.

707 **§ 1. Religiosus Episcopus emeritus habitationis sedem sibi eligere potest etiam extra domos sui instituti, nisi aliud a Sede Apostolica provisum fuerit.**

§ 2. Quoad eius congruam et dignam sustentationem, si cuidam dioecesi inserviverit, servetur can. 402, § 2, nisi institutum proprium talem sustentationem providere voluerit; secus Sedes Apostolica aliter provideat.

§ 1. A religious Bishop 'emeritus' may choose his own place of residence, even elsewhere than in a house of his institute, unless the Holy See disposes otherwise.

§ 2. If he has served a diocese, can. 402 § 2 is to be observed concerning his suitable and worthy maintenance, unless his own institute wishes to provide such maintenance. Otherwise, the Apostolic See is to make other provision.

SOURCES: § 1: c. 629
§ 2: *ES* I: 11

CROSS REFERENCES: cc. 184 § 1, 360-361, 375-380, 401-402, 607-610, 654, 665

COMMENTARY

Domingo J. Andrés, cmf.

This canon regulates the subject of the condition of the religious who has retired as a bishop,[1] by suggesting several alternative solutions in keeping with his status regarding his living situation and sustenance.

1. *The intended beneficiaries of the norm*—more complete than the parallel norm of the *CIC*/1917—are only the religious bishops emeritus, a quality and qualification that does not result from all possible ways by which one loses an ecclesiastical office (cf. c. 184 § 1), but rather from only the following ways: *a*) through the expiration of the determined time for the fulfillment of an episcopal function; *b*) by reaching 75 years of age, for all diocesan and equivalent bishops (cf. c. 401 § 1) whose resignation is accepted by the Roman Pontiff; or *c*) by resignation from the office

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 655–658; idem, "De religioso episcopo carente voce activa et passiva in proprio Instituto (cc. 705 y 707)," in *Commentarium pro Religiosis et Missionariis* 58 (1987), pp. 294–308.

because of illness or other grave case which has been duly accepted (cf. c. 401 § 2).

2. The rationale of the norm lies in the fact that it is unacceptable to have a gap in a question that the Code resolves for all the offices of the ecclesiastical hierarchy in line with the public function that has been performed for the good of the Church and in connection with the current sensitivity to old age, retirement, and accrued merits for performance of social and professional functions.

3. *The house or residence* (§ 1): the choice of residence is a right conferred in consideration of the character of the bishop, the rank of his office, and of the highly qualified service he has rendered to the Church.

The possible solutions available to fulfill these options are the following: *a*) residence in the particular church in which he was the ordinary pastor. In reality, it is probable that this is what he will do and this option is contemplated in c. 402 § 1; *b*) residence in a house of the proper institute, situated in the same particular church; or *c*) residence outside the previous options, which includes a particular church within or outside a house of the institute. It is advisable to note that the absolute right to opt for any house of the institute is not conferred on the bishop, as was contemplated in the *CIC*/1917.

When the norm, in contrast to the previous options, includes the possibility of the intervention of the Holy See, it is asserting a primary and prior solution to the other, thus providing a different way of deciding the matter. This is something, however, that is hardly probable in the reality of things; it is mentioning a subsidiary remedy. Likewise, it can impose a place of residence upon the bishop, let him exercise the prior options, and subsequently intervene if these solutions are not working adequately, or obligate a diocese or institute to receive the bishop and to furnish him with a home.

4. *Sustenance* (§ 2). Any of the possible solutions must be suitable and worthy, these being details that, in canon law, must be interpreted relative to the context, the office, and the person to whom they refer. Accordingly, *a*) *suitable* must be understood as proper for a religious bishop, keeping in mind the person, the situation and the real possibilities of the church, the institute, and the Holy See; and *b*) *worthy*, on the other hand, makes reference to the objective worthiness of the office that was realized, its rank and social status, and to the bishop's particular and personal worthiness, which, in each case, has been embodied in the prior two aspects of worthiness.

Sustenance must not be interpreted in the rigid and reductionist sense of "bread and wine," but rather as the whole of what is necessary to the sustenance of a person at a middle economic level, in accord with what we have here explained to be suitable and worthy with respect to food, clothing, spirituality, culture, travel, and the rest.

Thus, *the possible solutions envisioned by the norm,* can be the following: *a*) if the bishop has exercised his ministry in a diocese or similar jurisdictional structure, the primary obligation for his suitable and worthy sustenance falls to them; *b*) otherwise, the obligation will fall upon the institution that has requested his service: the Holy See, the Conference of Bishops, etc.; *c*) in both cases, the bishop's own religious institute can take charge of that sustenance (it being well understood that the canon limits itself to mentioning that possibility, but does not impose that obligation directly on the religious institute, since it would not be an equitable solution; notwithstanding that this solution is adopted in the majority of cases without distinction); and *d*) only secondarily will the Holy See provide, when the previous solutions do not work, or work imperfectly. This provision probably owes to the fact that, regarding the obligations of the Holy See, the provision of the canon differs with respect to residence and worthy maintenance. If, for the first case, the Holy See reserves for itself the right to provide for the bishop in a manner different than his choice, nevertheless, in the second case only a subsidiary responsibility is envisioned.

CAPUT VIII
De conferentiis Superiorum maiorum

CHAPTER VIII
Conferences of Major Superiors

708 **Superiores maiores utiliter in conferentiis seu consiliis consociari possunt ut, collatis viribus, allaborent sive ad finem singulorum institutorum plenius assequendum, salvis semper eorum autonomia, indole proprioque spiritu, sive ad communia negotia pertractanda, sive ad congruam coordinationem et cooperationem cum Episcoporum conferentiis et etiam cum singulis Episcopis instaurandam.**

Major Superiors can usefully meet together in conferences and councils, so that by combined effort they may work to achieve more fully the purpose of each institute, while respecting the autonomy, nature and spirit of each. They can also deal with affairs that are common to all and work to establish suitable coordination and cooperation with the Bishops' Conferences and with individual bishops.

SOURCES: *CD* 35: 5, 6; *PC* 22, 23; *AG* 33; *ES* II: 42, 43; *ES* III, 16, 21; *MR* 61–66; *PA* 21

CROSS REFERENCES: cc. 298–299, 312ff, 580, 586, 620

COMMENTARY

Domingo J. Andrés, cmf.

In a completely different form from the *CIC*/1917, in which conferences did not exist, the norm[1] limits itself to expressing the usefulness of

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp.659–664; idem, "Relaciones entre Obispos y Religiosos. Análisis y significado," in *Il nuovo Codice di diritto canonico. Novità, motivazioni, significato* (Rome 1983), pp. 233–284; M.S. DA COSTA GOMES scj., *O direito de associação na vida religiosa* (Rome 1989), pp. 213–334.

the establishment of conferences, without requiring their establishment, by delineating their four substantive and essential purposes. In realizing these ends, the legislator warns that the fundamental tenets and autonomy of each institute must be respected.

1. Regarding the rationale of the norm, it can be thought of as following the encouraging fact that the conferences exist and function very well in many nations, being for decades consecrated to and founded in effectively serving canonic ends. Once again, universal law stems from the particular life and law, which constitutes a genuine sign of natural lawful affiliation.

Its facultative institutionalization, inasmuch as being *facultative*, is based on the consideration of some realistic aspects, such as: *a*) recognition of the fruits it has borne, its historic utility, and the meaning of its service; *b*) taking into account the situation of the varied development of religious life as found in the nations and geographic regions of the world.

From the text of the canon it is seen that the decision to establish the conferences falls to the *major superiors* (cf. c. 620). They themselves, without distinction as to gender or exclusion of the supreme moderators, are inherently members of the conferences. The norm does not envision the establishment of conferences by local superiors, although neither can it be said that the norm categorically prohibits such establishment.

They "can usefully meet together" is the clause that establishes the faculty of association and recognizes the historical utility of its exercise but, for the above-expressed reasons, without imposing its exercise.

It is sufficient in law that the canon deals with the right of association, a guarantee of its exercise and an impulse and recognition of its ecclesial fruits. Certainly, in the present case, a possible canonical precept that required establishment of conferences would have encountered some difficulties and problems of observance in not a few places.

"In conferences or councils" is a clause that alludes to two establishment options not as though there were two ways to become associated, but rather as two very usual denominations of the same entity, perfectly interchangeable with various others, such as unions, associations, board, federations, confederations, etc.

The norm does not demonstrate any preference at all for territorial levels as criteria for the erection of conferences; likewise, there remain open the diocesan and provincial options—in the ecclesiastical and civil senses—the regional—also in both senses—as well as the national and international options.

Keeping in mind the conferences that have been established, we can say that their *organic structure* presents the following elements: *a*) common elements: the conference in itself, the general assembly, a management committee, and a permanent secretariate, in addition to council

members and possible internal federations determined by sectors or areas; and *b*) special elements: those that differ from some conferences to others depending on the extent and system of centralization and on the procedures of functioning that are adopted according to whether they deal with men or women religious.

5. *The constitutive ends* are described with total clarity:

a) "to achieve more fully the purpose of each institute": an end precisely placed in the vertex, precisely fitting the letter and spirit of the origins that inspired the figure of the conferences. In effect, the aim of each religious institute, as well as all its lesser characteristics and ways of conducting its work, should always prevail in the decisions of the conferences. On this point, the conferences should be established with the same spirit with which the universal law receives *those special aims* within its system (cf. cc. 574 §2, 577, 578, 587 §1, etc); b)"deal with affairs that are common to all": it is an aim very close to the prior one; it is like its prologue and conclusion, since each issue that can be submitted to the conference should be able to be considered in aid of the accomplishment of the singular aim of each institute whose major superior, or major superiors, are inherently members. In this work of coordination subordinated to a particular end, *the conferences are probably the most appropriate organizations*; c) "work to establish suitable coordination and cooperation with the Bishops' Conferences": this end is the one that the documentary sources of the norm have persisted in most prolifically. Important in this respect are the contents of the document *Mutuae Relationes* 62–66. By analogy, the conferences also present in this task advantages with respect to any other associative religious organization; and d) "coordination and *cooperation with individual* bishops": an end that presents the special requirements whose canonical channels of viability are much more predetermined in the areas of pastoral activity, public worship, care of souls, and of the apostolate, in which religious are subject to the bishops in the proper sense (cf. especially cc. 678–683).

6. "While respecting the autonomy, nature and spirit of each": through dealing with fundamental categories for every institute, the proviso must be applicable *to each one of the* above-mentioned aims.

Autonomy: pursuant to c. 586, is a fundamental tenet, which, moreover, is confirmed by all those canons that defer to the proper law of each institute.

Its own character: has a meaning akin to the identity (cf. c. 587 § 1) and part of the patrimony of every institute (cf. c. 578); it must appear clearly in the constitutions and play a determining role in education and the apostolate.

Its own nature: is an also ingredient of the patrimony of the institute (cf. c. 578), indefectible in the constitutions (cf. c. 587 § 1) as a trustworthy and evolved prolongation of the spirit of the founders, whose preser-

vation corresponds to ecclesiastical authority (cf. c. 576), and which should be imbued in the novices (cf. c. 652 § 2) and the professed (cf. c. 660 § 1), as well as being determinant in the field of education.

Therefore, having seen the profound importance of these three categories, essential and fundamental to an institute, it can be deduced that, in the relationships between the conferences of major superiors and the bishops' conferences and the particular bishops, the legislator wants to impede the development of a kind of "supra-institute"; a suitable associative structure is enough, arising with relative spontaneity, placed at the service of the identity and attainment of the constitutive end of each institute.

709 **Conferentiae Superiorum maiorum sua habeant statuta a Sancta Sede approbata, a qua unice, etiam in personam iuridicam, erigi possunt et sub cuius supremo moderamine manent.**

Conferences of Major Superiors are to have their own statutes which must be approved by the Holy See. Only the Holy See can establish them or give them juridical personality. They remain under the ultimate direction of the Holy See.

SOURCES: *PC* 23; *REU* 73 §5; *MR* 61

CROSS REFERENCES: cc. 114, 116-118, 120-123, 313-315, 319-320, 708

COMMENTARY

Domingo J. Andrés, cmf.

The figure of canonical establishment of the conferences of major superiors is completed in the preceding canon, while firmly maintaining the nonobligatory nature of their establishment and prescribing at the same time that if they are established, all must draft their own statutes, which must be approved by the Holy See, which grants them a juridical personality and maintains them under its supreme moderating governance.[1]

1. Regarding the rationale of the norm, which is intrinsically juridical, it is enough to observe that in law a collegial juridical person cannot exist once its constitutive purposes have been established, which could leave undone the issues ruled by this canon; otherwise, this person would be an errant mass in the space of the legal system.

2. "They have their own statutes which must be approved by the Holy See": this is a clear and double canonical precept, such that neither can the conferences canonically exist without the statutes, nor can the statutes formally exist and be binding if they have not been approved by the Holy See. As an effect of pontifical approval, the statutes cannot be modified without a new approval by the same authority (cf. c. 117).

Regarding the subject matter or content proper of the statutes, by grounding ourselves in the model of the Spanish "Confer,"[2] we can enu-

1. D.J. ANDRÉS, *El derecho de los religiosos. Comentario al Código* (Madrid-Rome 1984), pp. 664–5667.
2. SCR, *Decreto* December 8, 1953, in *Confer* 1 (1962), pp. 160–174.

merate the following: title and abbreviation, assigned and assignable members, purposes, nature of the collegial canonical juridical person, establishment in singular association, general organization,general assembly, general board, relations between the two assemblies and feminine and masculine boards, internal federations, and admitted associations.

3. The *erection as a juridical person* of the conference of major superiors occurs not by the law itself, but by the decree of erection, which presupposes approval by its statutes. For this, the Holy See must have substantially verified two things: *a*) that the conference is pursuing a really useful aim, in conformance with the requirements of c. 708, verifiable in the text of the statutes; and *b*) that it has sufficient means to accomplish said aim (cf. c. 114).

The principal *effects* produced by the granting of juridical personality can be summarized as the following: *a*) public character (cf. c. 116 §1) and pontifical character, extensible to the structures, branches, subsidiaries, etc., which, pursuant to the statutes, can arise; and *b*) acquisition of the necessary means for their activities: physical facilities, lawful representatives (cf. c. 118), handling of economic goods (cf. c. 634 § 1), responsibility for debts and contracted obligations (cf. cc. 638 § 3 and 639 § 1); perpetuity and extinction only in accordance with the Law (cf. c. 120 § 1), with the faculty of deciding the destination of its goods (cf. c. 123).

4. "Under the ultimate direction of the Holy See": this moderating authority by the Holy See is a logical effect stemming from both the conference's erection and pontifical character, and from its statutes' being expressly approved by the Holy See. It branches off in substantially three directions:

a) control of verifiable fidelity in the fulfillment of the approved statutes;

b) necessary approval for the lawfulness of the modification of the statutes;

c) occurrence or imposition of possible criteria and directives regarding how it conducts its work, according to the demands of historical and local circumstances.

Moreover, it is immediately noted that, for its being supreme moderation, it is not as immediate or intent on details as other non-supreme moderations can and should be, and is more along the lines of executive power.

TITULUS III
De institutis saecularibus

TITLE III
Secular Institutes

INTRODUCTION

Tomás Rincón-Pérez

1. On February 2, 1947, upon promulgation of the Constitution *Provida Mater Ecclesia*, Pope Pius XII gave official birth to the secular institutes, and established their special or fundamental law. A year later, this constitutive law would be developed and completed by the *Motu proprio Primo feliciter*, of March 12, 1948, and by the Instruction *Cum sanctissimus*, of March 19, 1948, of the Sacred Congregation for Religious to whom had been granted jurisdiction over the recently created secular institutes.

2. Though it is possible to go back to the 16th century to find evidence of the existence of *secular* forms of religious life, it was the result of the French Revolution, and due in good part to the difficulties which that historic occurrence created for the survival of the religious orders and their public work, that associations began to proliferate significantly that resisted incorporating into their regimen some of the essential or traditional elements of religious life, such as community living, public vows, and wearing the habit, etc.

It is widely known that this type of association, numerous during the 19th century, had no place in the *CIC*/1917, nor was it mentioned among its legislative sources in the Decree *Ecclesia catholica*, published in 1889 by Leo XIII, by virtue of which there was given an official approval of these associations. This deliberate silence was perhaps due to the juridical form not having been clearly outlined. In fact, many of these associations came to set themselves up as *religious congregations*, sanctioned officially in 1900 by the Constitution *Conditae a Christo*.[1]

As a result of the *CIC*/1917 being published, there began to appear in the life of the Church another type of association that did not find a clear

1. Cf. T. RINCÓN-PÉREZ, "Evolución histórica del concepto canónico de 'secularidad consagrada'," in *Ius Canonicum* 26 (1986), pp. 675–717.

place in the recently promulgated legislation. That was what might have justified the promulgation of the Constitution *Provida Mater Ecclesia.*

It must be kept in mind, however, that the new forms that try to be received in the form of *secular institute* are quite varied and different among themselves. In the last stage before the promulgation of *Provida Mater Ecclesia,* one of the votes presented to the SCR made clear this variety and diversity such that it almost encompassed the pontifical document. Specifically, the vote referred to two genuinely different types: those named "secular institutes of perfection," of a religious origin and orientation, and those called "secular institutes of apostolate," clearly differentiated from the religious forms. In that light, it was even asserted that separately regulating the two types of institutes was advisable. Pope Pius XII finally chose to regulate them together, though by means of broad universal norms while making room for special requirements in the constitutions of each institute. The constitutive norms that were finally adopted were, therefore, the fruit of a necessary unstable compromise, intended to accommodate very disparate institutes and to harmonize various and even divergent situations.[2]

In every case, by observing the constitutive norms in the current perspective, it seems clear that the originating characterization of the secular institutes was taken from the contemporaneous force schemes regarding the canonical states of perfection. Christian perfection that was professed in the institutes was solidly founded in the evangelical counsels; it was a life of complete consecration, *et quoad substantiam vere religiosa,* as the *Motu proprio Primo feliciter* states. So that an association was configured as a secular institute, the Instruction *Cum sanctissimus* provided that the element of complete consecration must include "quae etiam in foro externo, imaginem referat status perfectionis completi, et *quoad substantiam vere religiosi.*"

The foregoing explains that in the years that followed their official birth, the secular institutes suffered a profound evolution until finally disembarking on a theoretical and practical assimilation of the religious institutes, as though dealing with a new and current version of themselves, or as though before a last stage in the historical evolution of religious life. It was certain that with the existence of those institutes understood in this manner, the possibility of a renewed fullness of sanctity in the world was proclaimed, but "viewed through a looking-glass of the religious vocation, arguing, therefore, more in terms of adaptation or approximation to the world than of affirmation of the Christian meaning of the secular or lay condition."[3]

2. Cf. A. DE FUENMAYOR-V. GÓMEZ -IGLESIAS-J.L. ILLANES, *El itinerario jurídico del Opus Dei. Historia y defensa de un carisma* (Pamplona 1989), pp. 172–174.
3. Ibid., p. 178.

3. Vatican Council II took place when in fact a considerable number of institutes appeared juridically configured *ad instar religiosorum*. It is widely known that chapter VI of *Lumen gentium* frames all the doctrine of the consecrated life under the epigraph "Of the religious," in spite of which there is the common idea that it also includes secular consecration. For its part, Decree *Perfectae caritatis* (regarding the renewal of the religious life) also included secular institutes, though it expressly distinguished them from the religious institutes. Therefore, the concept of *religious* life in its full sense of *consecrated* life had appeared again. In effect—as the conciliar Decree provided in its number 11—the secular institutes "quamvis non sint instituta religiosa veram tamen et completam consiliorum evangelicorum professionem in saeculo ab Ecclesia recognitam secumferunt."

In view of these facts, the Commission for the Revision of the *CIC* could not situate the secular institutes under the same rubric as that of the religious institutes because the council had seen them each as specifically distinct phenomena; nor was it fitting to separate them totally because both types of institutes had as a common denominator a public consecration, or profession of the evangelical counsels, recognized by the Church in whatever nature their sacred bonds took in respect to profession. It must not be forgotten, in this respect, that the secular institutes appear situated in *Perfectae caritatis* on the chart of an exemplary typification of the religious or consecrated life.

4. The technical solution that the legislator chose consisted of institutionalising a common figure, the ICL, with two diverse modalities that it regulated separately: the religious institutes (title II), and the secular institutes, in the present title. This systematic localization of the secular institutes in the same juridical setting of which religious form a part is important to better understand the nature of the secular consecration that they profess. The theological-canonical doctrine has made evident the fact that the elements of consecration and secularity are constitutive and essential to this type of institution. Nevertheless, there are schools of thought that put the accent on secularity, qualifying it as *consecrated*, while others accent consecration, qualifying it as *secular*. If we turn to the configuration found in the Code, it is not the secularity that is qualified as consecrated, rather it is consecration, inasmuch as it is a common and generic concept (title I), that is qualified as *religious* (title II) or as *secular* (title. III).

710 **Institutum saeculare est institutum vitae consecratae, in quo christifideles in saeculo viventes ad caritatis perfectionem contendunt atque ad mundi sanctificationem praesertim ab intus conferre student.**

A secular institute is an institute of consecrated life in which Christ's faithful, living in the world, strive for the perfection of charity and endeavour to contribute to the sanctification of the world, especially from within.

SOURCES: *PME* I, III §2; *PF* V; *CSan* 10; *PC* 11; Paulus PP. VI, Alloc., 6 sep. 1970 (*AAS* 62 [1970] 619, 620, 622, 623)

CROSS REFERENCES: cc. 207, 573

COMMENTARY

Tomás Rincón-Pérez

Juridical configuration of the secular institutes

1. *Defining characteristics of a secular institute*

Canon 710, which serves as a portico to the specific regime of the secular institutes, describes the two essential elements that make up the definition of those institutes: consecration and secularity. They are ICL, as are religious, but they are not identified with the former, for they have the specific characteristic that their members, whether cleric or lay, live the consecration in the world through the evangelical counsels, and apostolically strive for the sanctification of the world, *praesertim ab intus*, that is, not necessarily because there are plural forms of living secular consecration, but principally from within the world, and if they are laypersons, in the sense of not being ordained, *in saeculo et ex saeculo* (c. 713).

The systematic placement of title III, which opens this canon, within the general framework of consecrated life (see introduction to title III), by forming a unitary concept with the religious institutes, is important to the better understanding of its nature.

In effect, the faithful who belong to a secular institute are inserted in the same juridical framework of which religious are a part, though they appear to be taken into account neither in the chapter regarding clerics nor in the chapters concerned with laity. This has permitted it to be affirmed that "its first and fundamental ecclesial state, its typological cate-

gory, and its *positio iuridica*, in the scope of Ecclesial states, does not consist of being clerics or laity, but in being consecrated."[1] From which it is inferred that as long as one desires to show or explain the juridical position of these faithful, better than to talk of laypersons (or clerics) who are consecrated, it will indeed be necessary to say consecrated laity or consecrated clerics.[2]

2. *Both elements equally essential: consecration and secularity*

Leaving aside, however, this generic focus of the question about the canonical prevalence of one or another element, what matters now is to emphasize that in an appropriate and precise definition of secular institute, the two elements must be integrated harmoniously, inasmuch as the two are equally essential: the common and the specific, or, in other words, the element of *consecration* and the element of *secularity.*

The doctrinal debate

It is well known that the way, even the possibility, of harmonizing those two elements had constituted the fundamental nucleus of the doctrinal debate that arose from the very instant in which Apostolic Constitution *Provida Mater Ecclesia* recognized the canonical existence of the secular institutes and established their fundamental law.[3]

The documents of the council brought to those who study these subjects new points of reflection regarding consecrated and secular life. On one hand, the secular institutes appeared clearly integrated inside consecrated life, but not inside religious life in the strict sense. On the other hand, in the council there were offered sufficient doctrinal elements with regard to the secular dimension of the Church (i.e. its insertion in the world so as to save it) as well as to the special and proper way that the laity was to perform its work in the ordination of temporal matters according to God. Perhaps, however, in the council a defining concept of consecrated secularity or of secular consecration was not developed.

This could explain that, because of the Council, the polemic continued when it came to appraising one or another of the elements that make up the definition of "secular institute."

1. E. MAZZOLI, "Gli Instituti secolari nel nuovo codice di diritto canonico," in *L'Osservatore Romano*, January 9, 1986.
2. Cf. ibid.
3. Cf. T. RINCÓN-PÉREZ, "Evolución histórica del concepto canónico de 'secularidad consagrada,'" in *Ius Canonicum* 26 (1986), pp. 683–688.

From a doctrinal sector, an essential component of consecration is the *separatio a mundo*, up to the point that it is considered unthinkable. Theologically speaking, then, a merger exists between secularity and consecration which leads us to say that the members of the secular institutes are not substantially laity; they lack the substance of the status of being secular. From this point of view, the secular institutes do not entail innovation in the substantial plane; its charismatic innovation is only relative. They constitute one more link in the evolution process of religious life.[4]

On the other hand, for others, secularity is as essential a component as consecration. Therefore, they do not accept that consecration should involve *separation* in its essence—*religious* consecration does, however, but *secular* consecration does not.[5]

Faced with this situation it was not strange that in the years following the council various initiatives were formulated with the purpose of clarifying the proper identity of these institutes. One of these initiatives was the congress held in Rome (November 20–26, 1970), sponsored by the SCRSI, whose central theme was "Consecration and secularity."[6]

Pope Paul VI has given important talks on this subject. Especially important was the talk directed at the moderators of the secular institutes on September 20, 1972,[7] in which the Pope tried to respond to a key question: what is the *quid novum* that the institutes contribute to the Church, that is, what is their theological—canonical nature in the institutional plan of the Church; how are consecration and secularity interconnected?

Being secular, said the Pope to the moderators of the secular institutes, your position in a certain manner differs from that of the plain laity. Inasmuch as you are secular, you are committed to the same values of the world, but as consecrated persons, you aim not so much to affirm the intrinsic validity of human things in themselves, but explicitly to orient them according to the gospel Beatitudes. On the other hand, you are not religious, but in a certain way your election agrees with that of religious because the consecration that you have made puts you in the world as witnesses of the supremacy of spiritual and eschatological values.

The Pope synthesized this set of ideas, reaffirming the two elements as being equally essential; neither of the two aspects of the spiritual physiognomy of the secular institutes can be valued more than the other: "Yours, summarizing, is a form of new and original consecration, springing

4. Cf. E. MAZZOLI, *Gli Istituti Secolari nella Chiesa* (Milan 1969), pp. 38, 87, 165; idem, "Repliche a proposito degli Istituti Secolari," in *Rivista di vita Spirituali* 25 (1971), pp. 194–212.

5. Cf. A. OBERTI, *Gli Istituti Secolari: Consacrazione, secolarità, apostolato* (Rome 1970).

6. Cf. M. MIDALI, "Secolarità, laicità, consacrazione e apostolato," in *Salesianum* 36 (1974), pp. 261–311.

7. *AAS* 64 (1972), pp. 615–620.

forth from the Holy Spirit to be lived amidst temporal reality, and to introduce the power of the evangelic counsels—this is of divine and eternal values—within human and temporal values."

The element "consecration" in the Code

The first statement of c. 710 is that a secular institute is an institute of consecrated life.

Its configuration, therefore, comprises all those elements, both theological and canonical, that define the consecrated life, identifying it and distinguishing it from any other consecrated life produced through the reception of baptism and the sacrament of Holy Orders. It is a question, then, of the defining elements of consecrated life that c. 573 establishes. They constitute a stable form of living, whose canonical specificity is based on a new consecration to give valuable testimony of celestial glory, and, in addition, to baptismal consecration through which the faithful are called to be an eminent sign in the Church.

On one hand, that new consecration implies formal profession, *coram Ecclesia*, of the three evangelic counsels of chastity, poverty, and obedience, and on the other hand, it implies the assumption of that obligation through vows or other sacred bonds, *votes propria sua ratione assimilata* (*LG* 44).

This description, however, would not be complete if we were to forget the piece of information given to us by c. 207 § 2. In this codified precept the existence of a *new status* is plainly stated, made up by both clerics and laity, that is, by ordained and non-ordained faithful. It is a question of a canonical condition that is founded in a special consecration to God; consecration that is realized through profession of the evangelical councils, predicable in principle by all faithful by reason of baptism.

In every case, what is important to underline here is that, in the reference c. 207 § 2 to a special consecration to God, it does not pertain exclusively to the religious state of c. 607, but rather to the state of consecrated found in c. 573. It is proven by the fact that such consecration is realized by the profession of the three councils through vows or *other sacred bonds* (cf. c. 207 § 2).It would be an inexplicable reference if it were exclusively a question of the religious institutes since the vows are preceptive and essential in religious profession.

Therefore, not only are the religious institutes contemplated in c. 207, but so are the secular institutes, through a generic concept of institutionalized consecrated life, whose defining characteristics, as we have said, are established by c. 573, and whose basic typology, in turn, is stated by c. 577, and whose common canonical statute is regulated in cc. 573–06.

The element "secularity"

From what has been said up to now and because of what the canonical point of view refers to, it can be concluded that the secular institutes together with the religious institutes shape the *status consecratorum.* In the words of the Council, "While it is true that secular institutes are not religious institutes, at the same time they involve a true and full profession of the evangelical councils in the world, recognized by the Church. This profession confers a consecration on people living in the world, men and women, laymen and clerics" (*PC* 11).

The council deliberately qualified it, as we have seen, so that secular institutes neither are religious institutes nor are they identified with them. Thus, the council urges them forthwith to "maintain their own special character, that is to say, secular, so that they can effectively fulfill the apostolate everywhere in the world and from within the world, because they were born for it" (ibid.).

Canon 710 does this as well. After having pointed out that they are institutes of consecrated life, with all its implications, it adds the characteristics of their special condition of the *secular*: their living in the world and their dedication to procure the sanctification of the world primarily (*praesertim*) from within it. Here resides the *quid proprium*, the characterizing element being religious institutes.

The inclusion of the term *praesertim* probably follows an old polemic about whether pluralism in the ways of living consecrated secularity was admissible. Some considered it admissible, mirroring what occurred in the dispute about multiple forms of religious life. Others, in contrast, denied it because of the risk of ambiguity that surrounded the inclusion of non-secular forms of living within the secular institutes.

Pope Paul VI echoed this debate in a discourse which he delivered on the occasion of the 25th anniversary of the Apostolic Constitution *Provida Mater Ecclesia.*[8] In this discourse he pointed out that the world has various needs and that there are many ways of operating within it. It comes as no surprise, then, that there should be more than one form of life among the secular institutes.

Pope John Paul II, after the publication of the Code, has insisted again on that "pluralistic richness" which has its manifestation in numerous spiritualities, within the common denominator of secular institute, as well as in the diversity of sacred bonds that express different modalities in the practice of the evangelical councils.[9]

8. *In questo giorno*, *AAS* 64 (1972), pp. 206–212.
9. Cf. *Alocución al Plenario de la* SCRSI of May 6, 1983, in *AAS* 75 (1983), pp. 685–689.

711 **Instituti saecularis sodalis vi suae consecrationis propriam in populo Dei canonicam condicionem, sive laicalem sive clericalem, non mutat, servatis iuris praescriptis quae instituta vitae consecratae respiciunt.**

Without prejudice to the provisions of the law concerning institutes of consecrated life, consecration as a member of a secular institute does not change the member's proper canonical status among the people of God, be it clerical or lay.

SOURCES: *PF* II; *CSan* 7d; *LG* 36; *AA* 2; Paulus PP. VI, Alloc., 26 sep. 1970 (*AAS* 62 [1970] 619)

CROSS REFERENCES: c. 710

COMMENTARY

Tomás Rincón-Pérez

Canonical status of consecrated members of secular institute

Having described the nature of a secular institute with its two constitutive and inseparable elements—consecration and secularity—logic compels the conclusion that the canonical status of its members is *secular consecrated* (or *consecrated seculars*, if the emphasis is on secularity). Canon 711, however, provides that consecration does not modify a member's canonical status, whether lay or clerical, among the people of God. Thus, it is not easy for canonical doctrine to decipher the precise scope and meaning of this precept.

Similar to what happened in c. 710, c. 711 had its interpreters who stopped in the middle and fixed their attention on *non mutat*, forgetting that such members had to live the consecrated life.[1] For others, in contrast, both parts of the canon were equally important, and it would have been a mistaken interpretation that considered only the first part. Moreover, to clarify the enigma, it was necessary to start from a double analogy: from the moment of their consecration, the members of secular institutes enter into an analogous state with the religious—for the author we are talking about, the religious form is the typical form of consecrated life—while, from the perspective of secularity, an analogy was produced

1. Cf. A. OBERTI, "Gli Istituti Secolari nel nuevo Codice di Diritto Canonico," in *Euntes Docete* 38 (1985), p. 212.

in respect to laity for which said members were neither properly religious nor properly lay.[2]

Other authors took into consideration both parts of the canon and were led to a conclusion, while being true in itself, that does not seem to be what the legal precept had wanted to express: the member of a secular institute did not change his canonical status, thus recognizing the distinction between cleric and laity made by divine law (c. 207 § 1). On the contrary, from the perspective of the life and sanctity of the Church, the status does change, considering that in it there is confirmed a new and distinct title of consecration to God, sanctioned and recognized by the Church.[3]

In our opinion, c. 711 must be interpreted in its entirety, or in other words, the two parts must be taken together: the secular consecrated, in effect, do not change their canonical state, but at the same time, their canonical status is special, that of consecrated life.

On the other hand, we think that the canon does not put into dispute the criterion of bipartition established in c. 207 § 1 as pertaining to the clerical or lay state. From this perspective, it is obvious that even a cloistered woman religious continues to be lay, that is, non-ordained faithful. What is made clear in that legal precept is the canonical status according to the classical tripartition criterion: clerics, religious, and lay. Consequently, it is referring to the stable forms of life, regulated by law and applicable to all those who, following a vocation, have freely chosen these forms and have been admitted into them. With these new facts, it is proper today to ask oneself if only those three classic canonical states exist or if there are other canonical conditions in the Church.[4]

In our judgment, the appropriate meaning to give to c. 711, indeed, the reason for its very existence, is to state clearly, as *Perfectae caritatis* had already done at the last moment, that the members of the secular institutes are not religious. If, however, that clarification was necessary in the council at the last hour, considering that both the title of conciliar decree and that of *Lumen gentium* introduced the thought that it was a matter of religious *in saeculo*, then in the Code, the specific details that distinguished one type of institute from another, as well as the canonical statute differentiated by its respective members, remained perfectly defined. Without said canon, it could have been deduced from all the evidence to an absolute certainty that the member of a secular institute is not religious. Nor can the conclusion be extracted from what was established

2. Cf. A. GUTIÉRREZ, "Lo stato della vita consacrata nella Chiesa. Valori permanenti e innovazioni," in *Monitor Ecclesiasticus* 110 (1985), pp. 37–63.

3. Cf. G. ACOORNERO-P.G. MARCUZZI, "La vita consacrata," in *La normativa del nuovo Codice*, 2nd ed. (Brescia 1985), pp. 126–129.

4. Cf. E. BAURA-J. MIRAS, "Notas para una tipología de los fieles a la luz de sus respectivos estatutos canónicos," in *La misión del laico en la Iglesia y en el mundo. Actas del VIII Simposio Internacional de Teología* (Pamplona 1987), pp. 337–350.

in the canon that, but for being religious, their canonical status is exclusively secular. It is not superfluous to remember in this respect how c. 207 § 2, in referring to consecrated life through the evangelical counsels, including the consecrated life of the secular institutes, denominates its *status*; and how c. 573, upon defining the ICL, configured them as a *stable form* of living the Christian vocation that implies a specific subjective juridical status. Abounding in facts, c. 574 also refers to the *state* of those who profess the evangelical counsels in the ICL, and therefore, the secular institutes are included.

It is no wonder, in view of these facts, that what followed in the doctrine, aside from talking about the religious state when it was necessary to do so, employed a more generic concept of *status consecratorum* or consecrated state. A certain author had entitled one of his works: "The State of the Consecrated in the Current Legislation of the Church."[5] The author thought, correctly in our judgment, that the *CIC* situated us before a new typological category, canonically denominated *status consecratorum*; a category that encompassed both religious and the members of the secular institutes, but not strictly as two different species of the same genre. In the opinion of Fr. Castaño—and perhaps he is right—the religious institutes and the secular institutes are not distinguishable by truly specific differences. Rather among them exists an analogy of intrinsic attribution or of participation, meaning that the members of both institutes intrinsically participate in the same reality, that is, of the *status consecratorum*, though not in the same way or with the same intensity.

In every case, leaving these disquisitions aside, it seems clear that the clause of c. 711, according to which the member of the secular institute does not change his own canonical condition, does not mean anything other than the non-loss of the secular condition—in contraposition to the religious condition—but without this involving one who is not consecrated.

Two important conclusions flow from these considerations:

a) The secular character in question is not absolutely identified with the secular character proper to those who have only received baptismal consecration, or in the appropriate case, priestly consecration. In this regard these words of Paul VI were clairvoyant: "Being secular, your position in a certain manner differs from that of the plain laity, inasmuch as you are committed to the same values of the world, but as consecrated. That is to say, not so much to affirm the intrinsic validity of human affairs in themselves, but explicitly to orient them according to the evangelical Beatitudes. On the other hand, you are not religious, but in a certain way, your election agrees with that of religious because the consecration that

5. Cf. J.M. CASTAÑO, "Lo 'Status Consecratorum' nell'attuale legislazione della Chiesa," in *Angelicum* 60 (1983), pp. 190–223.

you have made puts you in the world as witnesses of the supremacy of spiritual and eschatological values."[6]

b) It being certain that the secular consecrated must live in the world and that they exercise their apostolate from within the world, it would neither be precise nor true to affirm that consecrated secularity would represent "the most perfect incarnation of secularity," or that consecration makes the layperson more of a layperson in the Church.[7] The latter would be a greater than intended manifestation of superiority of the consecrated state over other forms of Christian life. In the council even the slightest suspicion that it could be understood in this manner was avoided, and thus the expression "state of perfection" was intentionally deleted. Moreover, it would be a feeble service to secularity such as it is understood in *Lumen gentium* 31, if it were intended to be set it up as a paradigm equal to consecrated secularity.[8]

6. Alloc. *Ancora una volta, AAS* 64 (1972), pp. 615–620.

7. Cf. J. BEYER, "La consagración de la vida en los IS," in *Acta Congr. Inter. Inst. Secul.* (Milan 1971); G. LAZZATI, ibid. p. 734.

8. Cf. T. RINCÓN-PÉREZ, "La noción canónica de secularidad consagrada" in *Actas del VIII Simposio Internacional de Teología* (Pamplona 1987), p. 424; P.A. BONNET, "De laicorum notione adumbratio," in *Periodica* 74 (1985), pp. 245–246.

712 **Firmis praescriptis cann. 598–601, constitutiones statuant vincula sacra, quibus evangelica consilia in instituto assumuntur, et definiant obligationes quas eadem vincula inducunt, servata tamen in vitae ratione semper propria instituti saecularitate.**

Without prejudice to the provisions of cann. 598–601, the constitutions are to establish the sacred bonds by which the evangelical counsels are undertaken in the institute. They are to define the obligations which these bonds entail, while always professing in their manner of life the secular character proper to the institute.

SOURCES: *PME* III §§ 2 et 3; *PF* II; *CSan* 7; SCR Resp., 19 maii 1949, I; *PC* 11; *REU* 74; Paulus PP. VI, Alloc., 2 feb. 1972, A et B (*AAS* 64 [1972] 207, 209, 210)

CROSS REFERENCES: cc. 598–601, 710

COMMENTARY

Tomás Rincón-Pérez

Sacred bonds

Among the prescriptions that make up the canonical status common to all the ICL, c. 712 refers especially to those contained in cc. 598–601, which have as their focus the evangelical counsels of chastity, poverty, and obedience, exactly as they are to be embraced and lived by all consecrated, whether religious or secular.

Once this general presupposition is established, the codified norm immediately imposes on the secular institutes two important duties, which are here analyzed separately: the duty of establishing in the constitutions the type of sacred bond with which the evangelical counsels must be embraced, and the precise determination of the obligations established by those bonds, keeping in mind in every case the necessity of conserving the secular character of the institute.

1. *Nature of the sacred bond*

From the canonical point of view, one of the most important differences between *religious* and *secular* institutes is rooted in this aspect.

The former assumes the evangelical counsels through public vows (cf. 607 § 2), while the secular institutes can also assume them through other sacred bonds, such as oaths or promises, as provided in the constitutions for each case. Hence, the importance of that first mandate of the canon is to establish in the fundamental code the type of sacred bond with which the evangelical counsels must be embraced in each institute.

In any event, it is a question of *sacred* bonds, that is, a matter of those other bonds (*votis propia sua ratione assimilata*) about which the council spoke (*LG* 44). This must be emphasized so as not to confuse the *alia sacra ligamina* (sacred bonds) with the *alius generis ligamina*, as the promise made to the institute, which permitted the Instruction *Renovationis causam* to be incorporated into the temporary religious profession, permission that has been repealed by the Code.[1]

Canon 712 does not disregard vows as being among the possible sacred bonds that the secular institute can establish in its constitutions. Neither the literal tenor of the precept nor the secular character of the institute seem to impede the choice of bonds of a different character: vows, promises, or promissory oaths (c. 1200), public or private.[2] In this regard, Pope John Paul II, in the recently promulgated Code, in an Allocution to the Plenary Session of SCRSI, May 6, 1983,[3] does not appear to disregard that possibility either, though he does not refer specifically to vows. Apropos to multiple numerous apostolic purposes, the Pope showed "that pluralistic richness is also manifest in the numerous spiritualities that give life to the secular institutes with the diversity of bonds in the practice of the evangelical counsels."

Concerning the *public nature* of the sacred bonds, it is not superfluous to recall the doctrinal context elaborated in the current c. 573 and, consequently, everything relative to the profession of the evangelical counsels by means of sacred bonds.

Despite the radical change undergone by the *Schema* regarding ICL of 1977, after the general consultation, the current c. 573 remained unchanged. Thus, we think applicable to it are those considerations that the commission entrusted to revise this part of the Code, sent to the consultative bodies and were contained in the *Praenotanda*. There, in the first place, it was affirmed that the description of consecrated life that was presented (the present c. 573) was in agreement with Vatican II, since in the council, by religious life, it was understood consecrated life in general, including that of the secular institutes.

1. Cf. T. RINCÓN-PÉREZ, "La aplicación del nuevo Código de derecho canónico en el ámbito de los ICL," in *Ius Canonicum* 25 (1985), p. 285.
2. Cf. G. ACCORNERO-P.G. MARCUZZI, "La vita consacrata," in *La normativa del nuovo Codice* (a cura di E. Cappellini), 2nd ed. (Brescia 1985), pp. 109–146; S. ARDITO, "Normativa degli Istituti di vita Consacrata," in *Monitor Ecclesiasticus* 110 (1985), pp. 64–102.
3. *AAS* 75 (1983), pp. 685–689.

That principle being established, the *Praenotanda* added that consecration to God was done "per professionem *publicam* consiliorum voto aut alio sacro ligamine ..." They concluded by pointing out that in the present precept all the theological and canonical elements that identified such institutes and distinguished them from other figures were contained, thus avoiding all possibility of confusion and error. It is important, principally in these times in which "nonnulli vitam consecratam per *publicam* professionem consiliorum evangelicorum aequiparare conantur vitae consecratae per meram baptismi receptionem." In our judgment, it appeared to be clear that consecration realized in a secular institute was of a public nature, whatever the nature of the sacred bonds. This had been affirmed in the council when it speaks of a true and complete profession of the evangelical counsels in secular life, being recognized by the Church. Moreover, it was a profession that "confers a consecration on people living in the world, men and women, laity and clerics" (*PC* 11).

As we appreciate these points, we are conscious of the difficulty that is involved in qualifying a profession as *public*, when vows or other sacred bonds had a private nature, in the sense of c. 1192. Nevertheless, it is also difficult to understand the contrary: that a profession of that kind not be public for the simple fact that the lawful superior in the name of the Church would not receive it. One must distinguish, perhaps, between profession and the taking of vows: profession not only encompasses the taking of vows, but also implies a public act of incorporation into the institute.

The question was already set forth in the revision work of the Code. With regard to the distinction between public and private vows, some consultative bodies suggested the necessity of introducing a third category of vows, keeping in mind that the Church also recognized the vows of the secular institutes, which were not *public* in the traditional sense, and yet they could not be considered *private,* either.

The secretary of the corresponding *Coetus* determined that the material was not sufficiently ripe to introduce a new terminology. In this sense, he pointed out that whether vows taken in the secular institutes were public was a question debated among the authors. Some considered them public because they had some official character in the Church, while others considered them private because they were not accepted *nomine Ecclesiae.*[4]

4. Cf. *Comm.* 12 (1980), p. 375.

2. *Determination of the obligations*

The members of the secular institutes have the generic duty of fully living the evangelical counsels of chastity, poverty, and obedience but they must do so *modo proprio*, according to their special condition as consecrated seculars, on the one hand, and on the other hand, according to the institute's own character, which is manifested in the foundational charism. Hence, once the types of sacred bonds that they commit to are established in the constitutions, the obligations that flow from these bonds must also be determined.

Aside from keeping in mind the provisions of c. 598, the basic norms from which these determinations must be made are contained in cc. 599–601 (see the respective commentaries). Nevertheless, it seems opportune to set down here, in reference to secular institutes, the fundamental obligations that each one of the evangelical counsels implies.

The counsel of chastity (c. 599) that the secular consecrated embrace implies an obligation to observe perfect continence in celibacy. Therefore, they must renounce marriage. Even supposing that this counsel was assumed by a *public* vow, surely it would not constitute an impediment validly to contract matrimony, but such a hypothetical situation would entail sufficient cause for *automatic* expulsion from the institute, pursuant to cc. 694 and 729. In the same manner, the commission of certain offenses having to do with the sixth commandment of the Decalogue constitutes cause for the obligatory expulsion to which c. 695 refers and is applicable to secular institutes pursuant to the provisions of c. 729.

The counsel of poverty (c. 600), also in the context of consecrated secular life, implies, on the one hand, being poor, in fact and in spirit, and on the other hand, the dependence and limitation on the use and disposition of goods, as provided in the proper law. Keep in mind, in this respect, that for its secular character, the members of those institutes, especially if they are laity, act in the world and try to order temporal affairs according to God. Therefore, the prohibition of clerics and religious to undertake commercial or industrial activities does not affect the members of secular institutes, nor does any other directive that has any direct or indirect relation with material goods. They must, however, undertake those activities from the condition of being consecrated, that is, as men and women who have assumed Evangelical poverty with a sacred bond. That makes the determinations of the proper law on this subject especially important to be upheld so that consecration and secularity are equally safeguarded.

The counsel of obedience (c. 601), assumed with a sacred bond, obliges the submission of the individual will to lawful superiors when they order something according to the proper by-laws. Therefore, it will be the fundamental Code of each institute that will determine the scope and content of that obligation of obedience, flowing from the sacred bond.

In the latter, as in the prior situations, the proper constitutional law to which is entrusted the function of determining those obligations will have to keep in mind the secular character of the institute. This obvious warning is stated in the final clause of the present canon. Also, the council, after having pointed out the condition of the consecrated, advised the institutes of the necessity of preserving "their own special character—their secular character, that is to say—to the end that they may be able to carry on effectively and everywhere the apostolate in the world and, as it were, from the world, for which they were founded." (*PC* 11) In this sense, it should not be forgotten that the rejection made by some to an ample pluralism in ways of living this special condition of life, was motivated in good part by the springing up of forms of life among the secular institutes that were hardly secular.

713 § 1 **Sodales horum institutorum propriam consecrationem in actuositate apostolica exprimunt et exercent, iidemque, ad instar fermenti, omnia spiritu evangelico imbuere satagunt ad robur et incrementum Corporis Christi.**

§ 2. **Sodales laici, munus Ecclesiae evangelizandi, in saeculo et ex saeculo, participant sive per testimonium vitae christianae et fidelitatis erga suam consecrationem, sive per adiutricem quam praebent operam ad ordinandas secundum Deum res temporales atque ad mundum virtute Evangelii informandum. Suam etiam cooperationem, iuxta propriam vitae rationem saecularem, in communitatis ecclesialis servitium offerunt.**

§ 3. **Sodales clerici per vitae consecratae testimonium, praesertim in presbyterio, peculiari caritate apostolica confratribus adiutorio sunt, et in populo Dei mundi sanctificationem suo sacro ministerio perficiunt.**

§ 1. Members of these institutes express and exercise their special consecration in apostolic activity. Like a leaven, they endeavour to permeate everything with an evangelical spirit for the strengthening and growth of the Body of Christ.

§ 2. Lay members participate in the evangelising mission of the Church in the world and from within the world. They do this by their witness of christian life and of fidelity to their consecration, and by the assistance they give in directing temporal affairs to God and in animating the world by the power of the Gospel. They also offer their cooperation to serve the ecclesial community in accordance with the secular manner of life proper to them.

§ 3. Clerical members, by the witness of their consecrated lives, especially in the presbyterium, support their colleagues by a distinctive apostolic charity, and in the people of God they further the sanctification of the world by their sacred ministry.

SOURCES: § 1: *PME* I–III; *PF* II, III
§ 2: *CSan* 7d; *LG* 31, 33, 36; *PC* 11; *AA* 2; *AG* 40; *EN* 70
§ 3: Pius PP. XII, Alloc., 8 dec. 1950 (*AAS* 43 [1951] 29); *PO* 3, 9, et passim; Paulus PP. VI, Alloc., 2 feb. 1972 (*AAS* 64 [1972] 210, 211)

CROSS REFERENCES: c. 710

COMMENTARY

Tomás Rincón-Pérez

Apostolic life

This precept is sustained by three fundamental principles:

1) Active apostolic life is the reason for being, the ultimate purpose of the secular institutes; it is why they were established and recognized by the Church in 1947 (see commentary on title. III).

2) The apostolate, however, is connatural in all Christian life and, *modo proprio,* in every religious life. Thus, the innovation of that form of apostolic life lies in its dealing with a secular apostolate made since consecration. Being secular, it intends to sanctify the world from within its own structures, and therefore it differs from the *religious* apostolate, which also seeks the sanctification of the world, that is, to lead it back to Christ, but by *withdrawing from the world* (c. 607 § 3). Being consecrated, it differs from the apostolate of the other faithful because it does not look so much to affirm the intrinsic validity of human affairs in themselves, but to direct them explicitly according to the evangelical Beatitudes. Through consecration, the member of a secular institute becomes a witness in the world to the supremacy of spiritual and eschatological values.[1]

3°) This secular apostolic life is predicated on both lay and clerical members. Therefore, the secular lay institutes and clerical lay institutes fit side by side. That seems obvious and was affirmed in the constitutive texts (*PME* and *PF*), as well as in the Council itself (*PC* 11); it was the object of a long argument, based on the fact that the exercise of the apostolate *in saeculo ac veluti ex saeculo*, according to the expression employed by *Primo feliciter*, did not work in configuring the associations of priests, considering that secular business did not pertain to them. In this sense, it was affirmed that it was possible to understand the meaning and value of secular consecration only by coming to understand the profound meaning of secularity. Thus, the lay secular institutes and the priestly secular institutes should not be placed in the same category. In view of that profound difference, there should be a distinct treatment.[2]

In a way, c. 713 responds positively to this suggestion of treating the apostolate proper to laity differently from what applies to clerics. Hence, we will analyze separately the three sections of the codified precept.

1. Cf. PAUL VI, Alloc. *Ancora una volta*, in *AAS* 64 (1972), pp. 615–620.
2. Cf. G. LAZZATI, "Natura del vincolo negli Istituti non religiosi," in *Natura e vincoli della vita consacrata* (Milan 1979), pp. 100–104.

1. *Consecration and secular apostolate*

The general norm is established in § 1, and it applies to laypersons and clerics alike. It is a configuring or defining norm that establishes a secular institute according its purpose: an association of Christians, lay and clerical, whose purpose, aside from the search for the perfection of charity, is the exercise of the apostolate in the world, from within their status as consecrated persons. Therefore, the first thing the norm says is that such apostolic activity is the way in which their own consecration is manifested and practiced.

Nevertheless, they are the consecrated who work from within the world, amidst temporal efforts, and therefore, the apostolic activity that they develop also has a secular character. Like leaven that is mixed into and dissolved in the dough to transform it, the consecrated strive to permeate everything with the Evangelical spirit, thus contributing to the growth and strengthening of the Body of Christ.

The apostolate of consecrated lay faithful

Paragraph 2 refers expressly to lay members and contemplates two fields of action: one that expresses a relationship to the world, and one that has an intra-ecclesial dimension. The first is proper to the faithful in their status as lay, and is marked by secularity. The second field, the intra-ecclesial, is also proper to all non-ordained faithful in their status as active members of the Church who are called to cooperate in its edification.

We will analyze separately this double perspective from which lay activity is contemplated—in the case of lay consecrated—but leaving it clear that to act in the Church or in the world forms a part of the single mission of the Church. Said another way, it is not a question of separable missions; they are not even properly seen as being distinct, considering the profound connection between the earthly city and the eternal city, and the ultimate relationship of the two orders, spiritual and temporal, in the single purpose of God.[3] As Vatican Council II teaches, "[t]he work of Christ's redemption concerns essentially the salvation of men; it takes in also, however, the renewal of the whole temporal order. The mission of the Church, consequently, is not only to bring men the message and grace of Christ but also to permeate and improve the whole range of the temporal" (*AA* 5). That means that the task of laity in the world, trying to direct it to God, is as ecclesial as the task that might be accomplished inside the Church-institution.

3. Cf. T. RINCÓN-PÉREZ, "La participación de los fieles laicos en la función santificadora de la Iglesia," in *Ius Canonicum* 29 (1989), pp. 617–662.

a) *Secular apostolic activity*

Inspired by the well-known passage of *Lumen gentium* 31, Apostolic Exhortation *Christifideles laici*, regarding the specific mission of the lay faithful, points out that the entire Church has a *secular* dimension, but the manner designated by the expression *secular* nature is proper and particular to laity: "Certainly all the members of the Church are sharers in this secular dimension but in different ways. In particular the sharing of the lay faithful has its own manner of realization and function, which, according to the council, is 'properly and particularly' theirs. Such a manner is designated with the expression *secular character*." (*CL* 15)

This manner proper to lay faithful—to ordinary Christians—also corresponds by way of analogy to the lay members of the secular institutes. Their apostolic life, their participation in the evangelizing function of the Church, has to be realized in a characteristic and particular way *in saeculo et ex saeculo*, that is, not only by being in the world, but by seizing the opportunity afforded by the world, and therefore, by participating in professions, activities, forms, places, and circumstances corresponding to that secular condition (cf. *PF* II). They fulfill this secular mission in two ways: on the one hand, with the witness of their Christian life and of their fidelity to their consecration, and on the other hand, with the cooperation that they lend to ordering temporal undertakings according to the will of God and in their effort to transform the world with the power of the Gospel.

The way § 2 of the present canon is written, it seems as though it deals with two alternative forms, but ordinarily they will have to be complementary forms: the insertion into the world in order to transform it with the power of the Gospel and in order to direct it to the will of God, shall be accompanied by a clear testimony of Christian life that, for one who has professed the evangelical counsels, is translated as fidelity to one's own consecration. Only in this way is it possible to illuminate and direct those temporal realities "so that they may be effected and grow according to Christ and may be to the glory of the Creator and Redeemer" (*LG* 31). For that, the council itself will reiterate forcefully that "a properly formed conscience and to impress the divine law on the affairs of the earthly city" (*GS* 43) will give back to all creation its original dignity.

b) *Cooperation in intra-ecclesial tasks*

According to the final clause of § 2, lay members of the secular institutes also are called to offer their cooperation in the service of the ecclesial community, according to their way of secular life. It deals with a concretization of the principle of communion or of equality, by virtue of which everyone, following his or her own condition and office, cooperates in the building up of the Body of Christ (c. 208). The only operative difference in this field is that which exists between the common priesthood and the ministerial priesthood, or between ordained and non-ordained faithful. In this sense, the lay members of a secular institute cooperate in the

service of the ecclesial community in the same way, with the same rights and duties that the rest of the non-ordained faithful have, whether ordinary Christians or religious.

According to those general criteria, the lay members of a secular institute are *habiles* (c. 228 § 1), that is, they have the capacity to be called by the sacred pastors for those Evangelical offices or assignments that are not necessarily reserved to the sacred ministers. They can exercise substitute functions in those services that, being proper to clericals and being connected to the ministry of the pastors, do not demand the sacrament of Holy Orders; for example, the function of extraordinary minister of holy communion (c. 910), and in general, the functions referred to in c. 230 § 3.

Besides these substitute functions, the active position of the lay member in the Church has multiple other manifestations, more proper to his condition as non-ordained faithful. For example, they are non-institutionalized activities of organic cooperation with tasks proper to the sacred ministers. We are referring specifically to those spontaneous activities of cooperation done in response to the individual initiative of the lay member, without the intervention, necessarily, of a canonical mandate or mission.

These activities of organic cooperation can be institutionalized, which causes the lay member to become a part of the ecclesiastical organization. Such can be the case of participation in the pastoral council (cc. 512, 536) or in economic affairs (cc. 492, 537), and perhaps also participation as one of the so-called "lay ministers" instituted pursuant to the provisions of c. 230 § 1.

Along with all this, the ordinary role of the lay member inasmuch as being non-ordained faithful is called to perform in the intra-ecclesial field, it consists of the active, free, and responsible exercise of his common priesthood, and fulfillment of his duties and the exercise of rights. The most important possible role in this respect is the active participation, internal and external, in the celebration of the liturgy, and substantial participation in the celebration of the Holy Eucharist (c. 899 § 2).[4]

3. *Apostolate of consecrated clerics*

Previously, we made mention of an old argument according to which the secular institute of clerics would not properly fit the nature of a secular institute. The problem stemmed from the difficulty in understanding the expression of *Primo feliciter*, acting *in saeculo ac veluti ex seaculo*, as it applied to priests.

4. Cf. ibid. pp. 630–632, 636.

Pope Paul VI echoed this argument in a discourse given on the occasion of the 25th anniversary of the *Provida Mater Ecclesia.* There he affirmed that priests also can be members of this class of institutes, not only because it is established in the pontifical and conciliar documents, but for the reason that they also have an essential relationship with the world. In contrast to the lay members, other than exceptional cases, they do not exercise that responsibility with immediate and direct work in the temporal order, but with their ministerial work, and through their work as educators of the faith; this being the highest way to contribute to the constant work of perfecting the world, according to the order and meaning of creation.

In the same sense, § 3 of this canon confers on the priests of the secular institutes the task of sanctifying the world not already *ex saeculo*, from within the world's own structures, but through their own sacred ministry. Moreover, it adds a specific task: that of helping his brothers in the presbyterium with a special apostolic charity. Ordinarily, that presbyterium will be the diocese where they are incardinated; in other cases, the priests of the institute itself will mold the presbyterium. In any case, the cleric of a secular institute has the special duty of contributing to the achievement of a true priestly fraternity.

It is easily seen that these two apostolic tasks are proper to every secular priest. The particularity resides in that the priest of a secular institute must fulfill those tasks by giving testimony to his consecrated life.

714 **Sodales vitam in ordinariis mundi condicionibus vel soli, vel in sua quisque familia, vel in vitae fraternae coetu, ad normam constitutionum ducant.**

Members are to live their lives in the ordinary conditions of the world, either alone in their families or in fraternal groups, in accordance with the constitutions.

SOURCES: *PME* III § 4; *CSan* 7; *PC* 11

CROSS REFERENCES: c. 710

COMMENTARY

Tomás Rincón-Pérez

Form of personal life

The secular, and not religious, condition not only affects apostolic activity, but it also has a clear canonical manifestation in the form of life of the members of a secular institute. Here one finds one of the distinctions between religious consecration and secular consecration. Communal life within the same house and under a common discipline constitutes an essential characteristic of religious life and is a manifestation of another essential characteristic: separation from the world. In contrast, the secular consecrated live communion of the spirit, but do not partake of communal life. Their insertion in the world causes their personal lives also to unfold in a secular manner, in tune with the ordinary circumstances of the world.

Without diminishing this principle of secularity, multiple forms of life are possible according to the provisions of the constitutions of each institute, following the pattern of the present canon. Just as it occurs among the other members of the human family, the secular consecrated can live either alone or with his or her own family or in groups of fraternal life.

In this regard, it is fitting to remember that in the *schemata* prior to the final draft of this canon, there was a clause by which members were prohibited from wearing any external sign of consecration. This clause having been deliberately deleted, it is legitimate to think that the legislator does not order, but neither does he prohibit, the wearing of an external sign.

715 **§ 1. Sodales clerici in dioecesi incardinati ab Episcopo dioecesano dependent, salvis iis quae vitam consecratam in proprio instituto respiciunt.**

§ 2. Qui vero ad normam can. 266, § 3 instituto incardinantur, si ad opera instituti propria vel ad regimen instituti destinentur, ad instar religiosorum ab Episcopo dependent.

§ 1. Clerical members incardinated in a diocese are subject to the diocesan bishop, except for whatever concerns the consecrated life of their own institutes.

§ 2. Those who, in accordance with the norm of can. 266 § 3, are incardinated in the institute, and who are appointed to works proper to the institute, or to the governance of the institute, are subject to the bishop in the same way as religious.

SOURCES: § 1: *CSan* 10b; SCR Resp. Estne institutum, 1952; *CD* 28; Paulus PP. VI, Alloc., 2 feb. 1972 (*AAS* 64 [1972] 211)
§ 2: *PF* III; *CSan* 8; SCR Resp. Regimen internum, 1952; *CD* 35: 1, 4

CROSS REFERENCES: cc. 266 § 3, 586, 596 § 2, 678, 710

COMMENTARY

Tomás Rincón-Pérez

Juridical situation of clerics incardinated in a secular institute

1. *Diversity of situations*

According to the norm of c. 266 § 3, the general rule is that the clerics of the secular institutes are incardinated in the dioceses for which they have been promoted. Nevertheless, by grant of the Apostolic See, there exists the possibility that they can be incardinated in their own institute. That general rule is based on the fact that the clerical secular institutes of pontifical right lack the power of governance while the societies of clerical apostolic life and of pontifical right—besides the religious institutes—have such power (see commentary on c. 596 § 2). But supposing that, by grant of the Apostolic See, a secular institute was endowed with the fac-

ulty to incardinate clerics, in the very act of granting this faculty, it would also be granted ecclesiastical governance.

At any rate, the juridical situation of clerics, especially in their relationship of dependence on the diocesan bishop, is different from being incardinated in the diocese or in their own institute. Canon 715 exists precisely to regulate this diverse situation.

The new canonical profile for incardination

To better illustrate its content, it is advisable to have in mind a general understanding about what the old institute of incardination was and what it means after Vatican Council II. It is well known, in this respect, that in the first moments of the council, certain pastoral necessities made apparent the advisability of revising the institute of incardination. Afterwards, however, the fathers of the council warned that simple canonical reform would be insufficient if a profound theological reflection were not undertaken regarding the priesthood. The fruit of this reflection was *Presbyterorum ordinis* 10, in which the universality of the ministry of the presbyters was affirmed as well as the consequences that were derived from that principle which looked toward an appropriate regulation of incardination.

The two coordinated ideas that were expressed in the conciliar decree to define the priesthood of the presbyters and its universal dimension are the priesthood of Christ, in which the presbyters had really been participants (cf. *LG* 28), and the universal mission confided by Christ to the Apostles, of which any priestly ministry partakes (cf. also *PO* 2).[1]

In light of those principles, the distinction that exists between ordination and incardination is clear: the former implying universal service, while the latter is configured as the juridical concretization of that service in a manner leading to its good and effective organization. As a consequence of all that, it is no longer appropriate to define incardination as a mere disciplinary bond, inasmuch as it is, on the one hand, a connection of submission to a diocese and an ordinary, and on the other, an instrument of vigilance and control. This disciplinary purpose is present, but it is derived and secondary and at the service of the primary purpose: the best fulfillment of the priestly ministry.

With these presuppositions taken care of, incardination can be defined as the incorporation of the cleric either into a pastoral structure of a jurisdictional character (whether territorial or personal) or into a struc-

1. Cf. T. RINCÓN-PÉREZ, "Sobre algunas cuestiones canónicas a la luz de la Exh. Ap. *Pastores dabo vobis*. III, Dimensión universal del sacerdocio y nuevo perfil canónico de la incardinación," in *Ius Canonicum* 33 (1993), pp. 332–347.

ture of an associative character by which the universal pastoral ministry is juridically and stably established for which the sacrament of Holy Orders is generically given.

Described this way, incardination can be understood either as the act of being incorporated (a moment *in fieri*) or as the relationship arising from such incorporation (a moment *in facto esse*). This last meaning is the proper and usual one since *incardinated* is generally what is used, not *incardinating*. This makes it possible for it to be configured as a juridical relationship for ministerial service.

The nature of this juridical bond, inasmuch as it is a formal element of that relationship, is determined by the object of the relationship, that is, by the pastoral ministry. In effect, it is a matter of a *plenary* bond, bonding to the plenary ministerial service, which implies, from the juridical viewpoint, full availability on the part of one incardinated to accept and perform the ministries that the ordinary confers upon him, always within the field that is properly ministerial or associated with it. Through pastoral imperatives, the bond of incardination also possesses the aspect of *stability*; that is, it cannot be a temporary or transitory bond with the possibility of a fixed term for its extinction, but neither is it a quasiperpetual bond to the point of configuring excardination as something exceptional. It should have the flexibility and mobility in each case that the pastoral necessities require and be established in the way best to judge the legitimacy of transfers to other dioceses when this is the case.

Finally, because it is a relationship of service, incardination bonds the presbyter not only to the bishop or the ordinary—it is certainly a hierarchical bond—but also to the remaining members of the presbyterium and to the faithful for whose service he is appointed. Therefore, the rights and duties that flow from the bond of incardination also have this triple reference.

It should be noted in this respect, that when the Pope dealt with priestly obedience in *Pastores dabo vobis* 28, he distinguished three different ways according to those three references: "First of all, obedience is 'apostolic' in the sense that it recognizes, loves and serves the Church in her hierarchical structure." The obedience of the presbyter, moreover, presents a *community requirement* because "it is not the obedience of an individual who alone relates to authority, but rather an obedience which is deeply a part of the unity of the presbyterium, which as such is called to cooperate harmoniously with the bishop and, through him, with Peter's Successor." Finally, the Pope added, "priestly obedience has a particular *'pastoral' character*. It is lived in an atmosphere of constant readiness to allow oneself to be taken up, as it were 'consumed,' by the needs and demands of the flock."

3. *Juridical situation of those incardinated in the diocese*

Paragraph 1 contemplates the case or general norm of clerics who are incardinated in the diocese. From among the many aspects of incardination that we have described, the codified precept explicitly regulates these two: a) the *dependence* on the diocesan bishop in matters respecting the priestly ministry and b) the *autonomy* in what is within the scope of consecrated life in the proper institute. It is implicit, however, that the rest of the aspects that characterize incardination are entirely applicable to the cleric of a secular institute who is incardinated in a diocese.

In effect, the fact of belonging to a secular institute does not impede incardination in a diocese from implying a *plenary* incorporation into it with the consequent plenary availability to accept the ministerial assignments that the bishop might confer upon the incardinate. Moreover, it is a matter of a *stable* connection to the diocese, which means that the stay in the diocese is subject to the general norms of excardination and not to the decisions of the internal superiors of the institute. Finally, by reason of incardination, the cleric of a secular institute must practice his ministry in the service of the diocese by assuming duties of justice in the three dimensions previously noted: with the bishop, with the presbyterium, and with the faithful.

Among those duties, several stand out: the duty of obedience to the ordinary; the duty of fraternal aid to the priests of the presbyterium; and the duty of pastoral service to the faithful (not only to those faithful integrated into the community through an ecclesiastic office, like the parochial office, but to all the rest of the faithful of the diocese). Obviously, together with those duties, the bond of incardination also contains rights: the incardinate has the right to establish his ministry through an ecclesiastical office and to be afforded a fitting allowance for support as well as due assistance regarding permanent spiritual and intellectual formation.

Not only do rights flow only from incardination, but also from his condition as a member of the faithful; and prominent among them is due respect for lawful autonomy. The bond of incardination is plenary only in relation to the sacred ministry and to all those aspects of personal life that directly or indirectly affect the ministry. Outside of this exist ample aspects of personal life, spiritual, formative, etc., of the incardinate presbyter that are neither subject to the bishop nor object, therefore, of the duty of obedience. This is what § 1 recognizes by setting aside from dependence on the bishop all that refers to consecrated life in the proper institute. It is a matter of an aspect that falls outside the ministerial scope, which is where incardination and the consequent duty of obedience to the diocesan bishop operate. Therefore, the problem of the so-called "double obedience" does not exist, for it is, in every case, a question of obeying, but in different fields and for different reasons: obedience to the bishop is immediately established upon incardination and its object is the ministe-

rial life and what is related to it; while obedience to the superiors of the institute covers only the aspects of consecrated life, which is based on the evangelical counsel of obedience, freely assumed with a sacred bond.

4. *Juridical situation of those incardinated in their own institute*

Paragraph 2 contemplates the exceptional case of those clerics of a secular institute who, by grant of the Apostolic See, are incardinated in their own institute. The situation is the inverse of the situation of the prior case. Certainly, in the present case, the dependence of the clerics on their respective internal superiors encompasses not only the aspects of autonomy that correspond to consecrated life (c. 586), but also the ministerial responsibilities resulting from the cleric's incardination in his own institute. In respect to the bishops, in contrast, the dependence is *ad instar religiosorum* if the incardinated are assigned to works proper to the institute or to its governance.

In this sense, the norms that regulate the relationships between religious institutes and the diocesan bishops in the exercise of the sacred ministry and other external works of apostolate are applicable to secular institutes. It was established in *Christus Dominus* 35, 2–4 that even the exemption "does not prevent religious being subject to the jurisdiction of the bishops in the individual dioceses in accordance with the general law," stating thereafter a list of specific activities of religious subject to the principle of subordination or dependence. Of all those activities, c. 678 recognizes only those relative to the care of souls, the exercise of public worship, and other works of apostolate; while the rest (sacred preaching, religious and moral education, catechetical instruction, liturgical formation of the faithful, etc.), appear regulated in other parts of the Code, principally in book III.

Therefore, religious and incardinated clerics in a secular institute, whether or not exempt—whether belonging to institutes of diocesan right or pontifical right—are in these matters subject to the internal power of the institute and at the same time to the power of the diocesan bishop.

716 **§ 1. Sodales omnes vitam instituti, secundum ius proprium, actuose participent.**

§ 2. Eiusdem instituti sodales communionem inter se servent, sollicite curantes spiritus unitatem et genuinam fraternitatem.

§ 1. All members are to take an active part in the life of the institute, in accordance with the institute's own law.

§ 2. Members of the same institute are to preserve a rapport with one another, carefully fostering a unity of spirit and a genuine fraternity.

SOURCES: § 1: *PME* III § 3, 2°; *PF* II; *CSan* 7b, 10b
§ 2: *PME* II § 1, 2°; III § 4; *PF* III; *CSan* 7d; *PC* 15

CROSS REFERENCES: cc. 602, 617 § 3, 710

COMMENTARY

Tomás Rincón-Pérez

Duties of members in the institute

1. Paragraph 1 of this canon imposes on all members the duty of actively participating in the life of the institute. In the first place, it is a matter of universal duty in the sense that it affects each member without exception no matter what his or her condition or situation within the institute. Moreover, the duty to encourage this active participation corresponds to those who govern the institute (c. 717 § 3). At the same time, however, it is a matter of a generically formulated duty, for which the proper law should determine the specific modes of active participation. In every case it is a moral duty, but once specified in the proper law, it is fitting to configure it as a true debt of justice, based in the juridical bond that triggered incorporation into the institute.

At a minimum, active participation implies the member's availability to accept assignments and to accomplish faithfully the tasks that are entrusted to him or her. Moreover, it requires of the members free and spontaneous concern for the running of the institute and the accomplishment of its ends. Therefore, the "life of the institute" must be understood to mean all that constitutes its reason for being: aims and means, internal organizational life and apostolic life, spiritual and material components, and tasks of formation and vocation.

2. Paragraph 2 constitutes a specific application to secular institutes of the generic norm established in c. 602. It is well known that, because of their secular character, life in common is not proper to those institutes (see commentary on c. 714). Nevertheless, applicable to all of its members is the duty to maintain communion among themselves, carefully fostering, as the norm specifies, a unity of spirit and a genuine fraternity. In contrast to § 1, nothing is said here about the advisability of establishing in the proper law specific measures of safeguarding and fostering unity and fraternity; still, c. 717 § 3 entrusts the directors of the institute to take care that unity of spirit is observed. Therefore, it will be advisable that such care is preceded and aided by specific disciplinary norms.

717 **§ 1. Constitutiones proprium regiminis modum praescribant, tempus quo Moderatores suo officio fungantur et modum quo iidem designantur definiant.**

§ 2. Nemo in Moderatore supremum designetur, qui non sit definitive incorporatus.

§ 3. Qui regimini instituti praepositi sunt, curent ut eiusdem spiritus unitas servetur et actuosa sodalium participatio promoveatur.

§ 1. The constitutions are to determine the institute's own form of governance. They are to define the period of time for which Moderators exercise their office and the manner in which they are to be designated.

§ 2. No one is to be designated supreme Moderator unless definitively incorporated into the institute.

§ 3. Those entrusted with the governance of the institute are to ensure that its unity of spirit is maintained, and that the active participation of the members is developed.

SOURCES: § 1: *PME* IX; *PF* IV; *CSan* 3
§ 2: c. 504; *AIE* 3
§ 3: *PC* 14; *ES* II: 18

CROSS REFERENCES: c. 710

COMMENTARY

Tomás Rincón-Pérez

Internal governance of the institute

This canon prescribes that the constitutions establish the manner of governance most appropriate to the character of the institute, as well as everything relative to the duration of the office of the directors and the manner in which they are to be designated.

Pursuant to this broad normative decentralization, each institute could choose a manner of governance that is predominantly personal or predominantly collegial. In no case may one or another manner be exclusively adopted, for both are to complement each other (see commentary on c. 596 § 1, which is applicable to secular institute where it is a matter of power held by the superiors and the chapters.)

In what is referred to as personal governance, the institute is governed by a supreme moderator, whatever specific name is adopted, and the parts and circumscriptions in which the institute is divided (c.581) are

governed by major moderators or directors analogous to the distinction between general and provincial superiors of the religious institutes. We already know that these general and provincial superiors, when it is a matter of an ecclesial religious institute of Pontifical right, possess power of governance, and thus are ordinaries (cc. 596 § 2, 134 § 1). In principle, such is not the case of the major directors of the secular institutes, unless by a grant of the Apostolic See, the institute has the capacity to incardinate clerics (cf. c. 266 § 3). For the rest, the figure of local director is not appropriate for secular institutes unless it is not used in the same sense of the local superiors of the religious houses.

As stated by c. 720, universal law (codified) requires that the major directors govern with the advice of a counsel, similar to what is provided in c. 627 for religious institutes. In the case of the secular institutes, however, it is almost exclusively the proper law's prerogative to determine the circumstances that require the deliberative or consultative vote of the council for the validity of an act. This material is regulated only by the codified law in the cases referred to by cc. 720, 726, 729, and 730: namely, entering into and exiting from the institute, automatic expulsion, proceedings for facultative expulsion, decree of expulsion, and transfer from one institute to another.

With respect to the collegial chapters and organs, whatever the terminology adopted by each institute, the universal law establishes nothing except for the brief reference of c. 596 by which said chapters have public associative power, which, for practical purposes, is equivalent to executive power of governance. Therefore, the constitutions of each institute will be charged with establishing competence and the functions that must be fulfilled as well as the manners of representation and operation.

Likewise, it falls to the constitutions to establish the qualifications required of the general director and the major director. Consequently, there is only one universal norm that must be adopted by each institute: the designation of directors must fall to a member who is already incorporated into the institute. It is the same criterion that c. 623 adopts for the office of religious superiors—which referred only to the general director, and without its being absolutely necessary (although it would be advisable)—to determine the time that must run from final incorporation.

Finally, the constitutions will have to determine the duration of the office of director, on all levels, as well as the manner of becoming designated, by election or by appointment. In the religious institutes, the system of election is obligated for the designation of general superior (c. 625 § 1), an elective function that falls to the general chapter (c. 631 § 1). This system seems to be the most appropriate for the designation of general directors in the secular institutes; but c. 717 refers all this material to the proper constitutional law.

718 **Administratio bonorum instituti, quae paupertatem evangelicam exprimere et fovere debet, regitur normis Libri V De bonis Ecclesiae temporalibus necnon iure proprio instituti. Item ius proprium definiat obligationes praesertim oeconomicas instituti erga sodales, qui pro ipso operam impendunt.**

The administration of the goods of the institute must express and foster evangelical poverty. It is governed by the norms of book V on 'The Temporal Goods of the Church', and by the institute's own law. This same law of the institute is also to define the obligations, especially the financial obligations, of the institute towards the members engaged in its work.

SOURCES: cc. 532 § 1, 1497 § 1; *PME* III § 3, 2°; *PF* III; *CSan* 7b; *PC* 13; *ES* II: 23

CROSS REFERENCES: cc. 298 § 1, 313, 1257, 1286

COMMENTARY

Tomás Rincón-Pérez

Administration of the temporal goods

In contrast to c. 634, in which the juridical personality of the religious institutes and their provinces and houses are recognized, there is no norm that makes this formal recognition with respect to the secular institutes. That is not an obstacle to secular institutes as such, being at least configured as public juridical persons (here we are not referring to the parts or circumscriptions into which they can be divided). Public associations (secular institutions are public associations, cf. c. 298 § 1) become constituted as juridical persons by virtue of decree of erection (c. 313).

Now then, all the temporal goods belonging to a public juridical person are ecclesiastical goods, and its juridical governance is established in the Code, specifically in book V and in the proper statutes (c. 1257). Consequently, c. 718 is a specific application of the common norms that govern the administration of ecclesiastical goods to the secular institutes, save that the statutory law is called here the proper law of the institute. Therefore, the only two legal sources by which the administration of the goods of an institute are governed are contained in book V of the Code and in the proper law, in contrast to religious institutes that are ruled, in

addition, by the special norms and the universal norms contained in cc. 634–640.

Secular institutes, however, are made up of faithful who profess with a sacred bond the evangelical counsel of poverty. Hence, the codified precept recommends that the institutes manifest and encourage that evangelical poverty in the administration of their goods, in the same way c. 634 § 2, being inspired by *Perfectae caritatis* 13, exhorts religious institutes to avoid any appearance of luxury, immoderate profits, and the accumulation of goods.

Together with these recommendations, the precept expressly orders that the proper law shall determine the obligations of the institute, especially economic ones, with respect to those members who work for the institute. The universal law imposes generally upon the administrators of ecclesiastical goods the duty of paying a just and decent wage to contracted personnel, and moreover, of meticulously observing civil laws pertaining to labor and social life (cf. c. 1286). Canon 718, however, does not exactly contemplate this case, but rather the case of those members of the institute that work for the institute itself, without there necessarily being a contractual relationship, properly speaking. Therefore, the general norm is not enough; but in the proper law there is an obligation to determine the obligations that flow from that relationship, whatever its nature, between the institute and the member who works for the institute.

719 **§ 1. Sodales, ut vocationi suae fideliter respondeant eorumque actio apostolica ex ipsa unione cum Christo procedat, sedulo orationi vacent, sacrarum Scripturarum lectioni apto modo incumbant, annua recessus tempora servent atque alia spiritualia exercitia iuxta ius proprium peragant.**

§ 2 Most Holy Eucharistiae celebratio, quantum fieri potest cotidiana, sit totius eorum vitae consecratae fons et robur.

§ 3. Libere ad sacramentum paenitentiae accedant, quod frequenter recipiant.

§ 4. Necessarium conscientiae moderamen libere obtineant atque huius generis consilia a suis etiam Moderatoribus, si velint, requirant.

§ 1. In order that they may respond faithfully to their vocation and that their apostolic action may proceed from their union with Christ, the members are to devote themselves assiduously to prayer, to engage in a suitable way in the reading of the sacred Scriptures, to make an annual retreat and to carry out other spiritual exercises in accordance with their own law.

§ 2. The celebration of the Most Holy Eucharist, daily where possible, is to be the source and strength of their whole consecrated life.

§ 3. They are to go freely to the sacrament of penance and receive it frequently.

§ 4. They are to be free to obtain the necessary spiritual direction. Should they so desire, they may seek such counsel even from their Moderators.

SOURCES: § 1: *PME* III § 2; *CD* 33; *PC* 2e, 5, 6, 11; *DV* 25; *ET* 35
§ 2: c. 595 § 1, 2°; *MF* 753–774; *PC* 6
§ 3: c. 595 § 1, 3°; *Paen* IIIc
§ 4: *LMR* II: 11

CROSS REFERENCES: cc. 298 § 1, 313, 710, 1257, 1286

COMMENTARY

Tomás Rincón-Pérez

Norms of piety

The ascetical norms drawn together in this canon constitute the nucleus of every Christian life and consequently, the nucleus of the life of secular consecration. It is, however, the nucleus or some basic principles that the proper law must subsequently develop and specify, according to the particular physiognomy of each institute and according to the circumstances in which the secular lives of its members unfold. In this way, Christian spirituality, shared by all who are baptized, is diversified into multiple spiritualities, following the courses traced by different foundational charisms.

Intense dedication to prayer as well as a *modo apto* of reading the Sacred Scriptures (§ 1), that is, "the prayerful and meditative reading of the word of God—*lectio divina*," (*PDV* 47) constitute, in effect, basic principles of Christian spirituality. But inasmuch as they are basic principles, the proper law has the duty to foster them through specific norms that determine the most appropriate ways and times to carry out these activities, within the margins of freedom that characterize secular life. Likewise, the proper law not only should urge the observance of the annual times of retreat, but also should design ways that facilitate that observance. It should not be forgotten that incorporation into an institute establishes a juridical bond from which flow not only duties to God and the proper institute, but also rights, among which are those relative to spiritual formation. That is why in matters of ongoing formation, c. 724 § 2 imposes on the directors the duty of diligently caring for that continuing formation.

We know from conciliar teaching that the Most Holy Eucharist (§ 2) is "the source and summit of the Christian life" (*LG* 11), and it is not fitting, consequently, to build up any Christian community if it does not grow from and hinge on the Most Holy Eucharist. This is why the proper law has understood this in several of its precepts. For example, in defining a diocese (c. 369), or in specifying as a primary duty of this parish priest, the law demands the Most Holy Eucharist is made the center of the parochial community, or when it establishes the celebration of the Most Holy Eucharist as the center of the life of the seminary (c. 246); or finally, when it issues a precept that every religious house must have at least an oratory in which the Eucharist is celebrated and reserved so that it truly is the center of the community (c. 608).

Certainly, the members of secular institutes do not live in community but they do live in communion of spirit (c. 716 § 2). The Christian community is also formed in this broad sense, and "no Christian community is

built up which does not grow from and hinge on the celebration of the Most Holy Eucharist." (*PO* 6) Moreover, the works of apostolate in the world, like those of all the Church, will only be fruitful if they take the Most Holy Eucharist as their origin and source, and are directed toward it as their summit. Hence, we see the importance the proper law ought to give to eucharistic life in respect to the three fundamental dimensions of the august sacrament: sacrament-sacrifice, sacrament-communion, and sacrament-presence (cf. *RH* 20).

Paragraphs 3 and 4 refer respectively to the frequent reception of the sacrament of penance and the necessity of direction of conscience or spiritual direction. In both cases, the codified precept puts the accent on freedom, when the person is receiving the sacrament, which includes the freedom to choose a confessor, or when manifesting his or her conscience in spiritual direction with a chosen director. Putting aside those aspects of freedom, the proper law should urge those duties, by recommending the most opportune times, even by gathering together ways to make its accomplishment easier and more effective. In religious institutes, the duty of frequent confession is situated in two distinct frames: among the duties of the religious (c. 664) and among the responsibilities incumbent upon the superiors (c. 630). *Mutatis mutandis*, the directors of the secular institutes will have to demonstrate a willingness to facilitate the members, especially lay members, in the frequency of the sacrament of penance, while, of course, respecting their freedom.

In the other three occasions in which the Code makes a list of the norms of basic piety that must be lived by the seminarians (c. 246), clerics (c. 276), and religious (c. 663), there are express references to Marian devotion. It is even expressly recommended in the case of seminarians and religious that they pray the holy Rosary. It is not apparent why recourse to the Virgin Mother of God, "the example and protectress of all consecrated life" (c. 663 § 4), is not mentioned in c. 719. It is obvious, still, that among "the other exercises of piety" that the proper law must determine, exercises of Marian piety should occupy an important part.

720 **Ius admittendi in institutum, vel ad probationem vel ad sacra vincula sive temporaria sive perpetua aut definitiva assumenda, ad Moderatores maiores cum suo consilio ad normam constitutionum pertinet.**

The right of admitting a person to the institute, or to probation, or to the taking of sacred bonds, both temporary and perpetual or definitive, belongs to the major Moderators with their council, in accordance with the constitutions.

SOURCES: c. 543

CROSS REFERENCES: cc. 641, 710

COMMENTARY

Tomás Rincón-Pérez

Right of admission

Similar to religious institutes, admission to a secular institute is accomplished in three consecutive stages: initial probation, temporary incorporation, and perpetual or definitive incorporation. In any of these stages, the right to admit corresponds to the major moderators with the advice of their council. From this universal precept the constitutions that will determine the class of major moderator and the grade of connection to the council will emerge. It might be provided, for example, that the right to admit to perpetual incorporation corresponds exclusively to the supreme moderator and requiring, moreover, either the deliberative or consultative vote of the council.

In all cases, according to the provisions of c. 720, the action of the council is always necessary; and this is in contrast to what is established in c. 641 for admission to the novitiate where even the necessity of the council's vote (or the lack thereof) is left to the determination of the proper law.

721 **§ 1. Invalide admittitur ad initialem probationem:**
1° qui maiorem aetatem nondum attigerit;
2° qui sacro vinculo in aliquo instituto vitae consecratae actu obstringitur, aut in societate vitae apostolicae incorporatus est;
3° coniux durante matrimonio.

§ 2. Constitutiones possunt alia admissionis impedimenta etiam ad validitatem statuere vel condiciones apponere.

§ 3. Praeterea, ut quis recipiatur, habeat oportet maturitatem, quae ad vitam instituti propriam recte ducendam est necessaria.

§ 1. The following are invalidly admitted to initial probation:
1° one who has not yet attained majority;
2° one who is currently bound by a sacred bond in any institute of consecrated life, or incorporated in a society of apostolic life;
3° a spouse, while the marriage lasts.

§ 2. The constitutions can establish other impediments to admission, even for validity, or attach conditions to it.

§ 3. For a person to be received into the institute, that degree of maturity is required which is necessary to live fittingly the life proper to the institute.

SOURCES: § 1: c. 542,1°
§ 3: *SS* II, III, *SCong* 31, 33, 34; *PC* 12

CROSS REFERENCES: cc. 597 § 2, 643, 710

COMMENTARY

Tomás Rincón-Pérez

Admission to initial probation: requirements

Admission to a secular institute is initiated with a probation period that has objectives similar to those of the novitiate in the religious institutes, though both institutions differ in not a few aspects, among which are the subjective requirements for validity of admission that is regulated by c. 721.

In effect, according to § 1, the candidate for initial probation must have reached the age of majority, that is, at least 18 years of age (cf. 97 § 1), while for the novitiate it is sufficient to be 17 years old.

It is an impediment to validity, just as it is for the novitiate, to be bound by a sacred bond in an ICL, whether religious or secular, or to be incorporated in an SAL. It is not an impediment, however, to have been previously bound to an institute or society even in the case where the candidate had hidden that circumstance. This concealment is handled for the novitiate in c. 643 § 1.5, but it does not appear in c. 721, and therefore it is not a requirement universal in scope for validity, though nothing impedes the constitutions from establishing it for admission in a particular institute. A similar thing happens with admission gained through violence, or through grave fear or fraud on the part of the candidate or the proper directors. For the novitiate, it is *a iure*, a diriment impediment for admission to initial probation, the present canon says nothing. Therefore, either the constitutions—pursuant to § 2—elevate the coercion *vi, metu gravi aut dolo* to a diriment impediment, or on the other hand, those possible circumstances may have to be interpreted pursuant to c. 125.

The last impediment of universal scope is that of being married while the conjugal bond endures. Secular consecrated life, like religious consecrated life, implies the assumption of the evangelical counsel of chastity with the consequent obligation of observing perfect continence in celibacy (c. 599). In principle, that makes impossible the situation of being married and the new canonical situation that the candidate intends to assume.

Besides those three universal requirements, common to all secular institutes, the proper constitutional law can establish, pursuant to § 2, other impediments, even diriment impediments, or it can make conditions. Within the common denominator contemplated by universal law, each secular institute is configured differently according to its nature and its own aims. That explains, for the purposes of admission, the existence of a broad margin of freedom to place impediments or conditions on those candidates who wish to follow that particular spiritual road and to participate in that mission.

In any case, § 3 adds that the candidate must possess the necessary maturity to duly lead a life proper to the institute. It is a subjective quality that the moderators will have to evaluate properly before admitting a candidate to initial probation and afterwards, with new criteria and with more elements of judgment, evaluate temporary incorporation and perpetual or definitive incorporation.

Canon 597 § 2 has already established that no one may be admitted to an institute of consecrated life without due preparation. Implicitly contained in this norm is the possibility and advisability of the proper law's covering the old institution of the *period of postulancy*, about which the

Code had been silent. In a document of CICLSAL, dated February 2, 1990 that had for a title "Orientations Regarding the Formation of Religious Institutes" and had a character of Instruction pursuant to c. 34, this stage was thought of as prior to entering the novitiate, and the document referred the determination of the name and the various forms of the stage's development to the proper law.[1]

The direct recipients of the cited Instruction are religious institutes. Therefore, the orientations stated in it do not affect secular institutes, but in the material at hand, it is required that all the candidates for admission to initial probation possess the necessary maturity, and nothing impedes each institute's establishing a system of prior preparation by which it is in the best position to judge said maturity.

With due reservation, the concerns manifested in the Synod of Bishops of 1990 regarding priestly formation and which were adopted by the Pope in Apostolic Exhortation *Pastores dabo vobis* 62, are applicable to the case. In effect, nowadays there is a large discrepancy between the lifestyle and the basic preparation of men, "even when they are Christians and at times have been in Church life," states the pontifical exhortation, and the lifestyle and the formative demands of the seminary. In view of this, though it is still in a study and experimentation phase, the Pope proposed the creation of a prior preparatory phase or "propaedeutic period" before entering the major seminary to better guarantee the required maturity in the candidate.

1. Instr. *Potissimum Institutioni*, 82 (1990), pp. 472–532.

722 **§ 1. Probatio initialis eo ordinetur, ut candidati suam divinam vocationem et quidem instituti propriam aptius cognoscant iidemque in spiritu et vivendi modo instituti exerceantur.**

§ 2. Ad vitam secundum evangelica consilia ducendam candidati rite instituantur atque ad eandem integre in apostolatum convertendam edoceantur, eas adhibentes evangelizationis formas, quae instituti fini, spiritui et indoli magis respondeant.

§ 3. Huius probationis modus et tempus ante sacra vincula in instituto primum suscipienda, biennio non brevius, in constitutionibus definiantur.

§ 1. The initial probation is to be so arranged that the candidates can better recognise their divine vocation, in fact that proper to the institute, and be trained in the spirit and manner of life of the institute.

§ 2. Candidates are to be properly formed to live a life according to the evangelical counsels. They are to be taught how to translate this life completely into their apostolate, applying those forms of evangelisation which best correspond to the purpose, spirit and character of the institute.

§ 3. The constitutions are to define the manner and time of the probation to be made before the first sacred bonds are undertaken in the institute; this time is not to be less than two years.

SOURCES: § 1: c. 565 § 1; *SCong* 6 § 1; *ES* II: 33
§ 2: c. 565 § 1; *PME*; *PF* III; *SS* III

CROSS REFERENCES: c. 646

COMMENTARY

Tomás Rincón-Pérez

Initial probation

Consecrated life in a secular institute through full assumption of the evangelical counsels should be preceded by a period of prior preparation analogous in its objectives to the novitiate of religious institutes, but distinct in its juridical configuration.

The purpose of this initial probation, that is, the primary objectives sought to be achieved, is summarized in § 1. The norm presupposes that the candidate has already felt the divine vocation to consecrated life, specifically, to consecrated life in a certain institute. Therefore, the primary motive of the initial probation is to contribute to the candidate's making a most profound discernment regarding that divine vocation such that it should be followed and realized in that specific institute. Therefore, the initial probation also has as a goal that the candidates train in each institute's own spirituality and way of life.

The initial probation is fundamentally a time of formation and is described as such in § 2. In the first place, it is a matter of formation for consecrated life; the candidates must form themselves to live according to the evangelical counsels that they will assume one day through sacred bonds. This consecrated life, however, is at the same time secular apostolic life; therefore, the candidates have to learn to convert their entire lives into the apostolate, training themselves in those forms of evangelization that best fit the aim, spirit, and nature of each institute. As one can see, the formation imparted in this probationary period includes, on the one hand, the two elements that define the life of secular consecration and, on the other, the specific features which characterize a particular institute. When one is dealing with a secular apostolate, given that there are many different forms of bringing about the permeation of temporal realities with the light and power of the Gospel, the formation for the apostolate that is specific and proper to each institute takes on a special importance.

In contrast to the novitiate, which is an institution perfectly defined and configured by universal law, § 3 confers on the constitutions of each institute the function of establishing the way that this initial probation has to be carried out, as well as its duration. This duration, in all cases, may not be less than two years, according to the rule predetermined by the universal law. Still, it is not, in our judgment, an exigency *ad validitatem* as is the requirement of twelve months of novitiate for religious (see c. 648).

723 **§ 1. Elapso probationis initialis tempore, candidatus qui idoneus iudicetur, tria consilia evangelica, sacro vinculo firmata, assumat vel ab instituto discedat.**

§ 2. Quae prima incorporatio, quinquennio non brevior, ad normam constitutionum temporaria sit.

§ 3. Huius incorporationis tempore elapso, sodalis, qui idoneus iudicetur, admittatur ad incorporationem perpetuam vel definitivam, vinculis scilicet temporariis semper renovandis.

§ 4. Incorporatio definitiva, quoad certos effectus iuridicos in constitutionibus statuendos, perpetuae aequiparatur.

§ 1. When the time of the initial probation has been completed, a candidate who is judged suitable is either to undertake the three evangelical counsels sealed with a sacred bond, or leave the institute.

§ 2. The first incorporation is to be temporary, in accordance with the constitutions, but is to be for not less than five years.

§ 3. When this period of incorporation has been completed, a member who is judged suitable is admitted to perpetual or definitive incorporation, that is, by temporary bonds which are always to be renewed.

§ 4. Definitive incorporation is equivalent to perpetual incorporation in respect of defined juridical effects, which are to be established in the constitutions.

SOURCES: § 1: cc. 571 § 2, 574 § 1; *SCong* 7 § 1,1°
§ 2: c. 574 § 1; *SCong* 7 § 1,2°
§ 3: cc. 488,1°, 575 § 1, 577 § 1; *PME* III § 3; *SCong* 8 § 1,1°
§ 4: *SCong* 8 § 1,2°

CROSS REFERENCES: c. 727

COMMENTARY

Tomás Rincón-Pérez

Incorporation into the institute

The initial probation, whatever its method of accomplishment, does not entail any incorporation into the institute. This takes place when the

candidate who is considered appropriate embraces the three evangelical counsels with a sacred bond that is determined in the constitutions. From that moment, the candidate is converted into a member of the institute in full right. He or she assumes the obligations stemming from the sacred bonds and becomes entitled to all the rights and is bound by the other obligations contained in the juridical bond that established the incorporation.

The first incorporation into a secular institute is obligatorily temporary for a period not less than five years. Once this period of temporary incorporation has run, a period in which the three evangelical counsels have been embraced through a sacred bond, the candidate who is judged suitable—and being not less than 25 years of age—will be incorporated into the institute, either perpetually or definitively. *Perpetual* incorporation, being in itself an indissoluble bond, involves the assumption of perpetual sacred bonds and therefore, is not canonically renewable. On the other hand, *definitive* incorporation, which also creates an indissoluble bond, is accomplished in fact through temporary vows, but they always must be renewed periodically. While periodic renewal of those bonds is obligatory, it is fitting to say that definitive incorporation is potentially perpetual, and herein lies its difference with merely temporary incorporation.

By being potentially perpetual, for certain juridical purposes—which the constitutions shall determine, pursuant to the provisions in § 4—*definitive* incorporation is comparable to perpetual incorporation. In contrast, for other juridical purposes, the difference between one and another class can be a determining factor. Such would be the case, for example, of possibly exiting from the institute, either by indult or by expulsion, and the corresponding dispensation from sacred bonds according to whether they have been assumed perpetually or only temporarily even with the obligation to renew them (see commentary on c. 727).

724 **§ 1. Institutio post vincula sacra primum assumpta iugiter secundum constitutiones est protrahenda.**

§ 2. Sodales in rebus divinis et humanis pari gressu instituantur; de continua vero eorum spirituali formatione seriam habeant curam instituti Moderatores.

§ 1. After the first undertaking of the sacred bonds, formation is to continue without interruption in accordance with the constitutions.

§ 2. Members are to be formed simultaneously in matters human and divine. The Moderators of the institute are to have a serious concern for the continued spiritual formation of the members.

SOURCES: § 1: *SCong* 8 § 1,3°; *PC* 18; *ES* II: 33, 35
§ 2: *SS* IV; *SCong* 50–53; *PC* 11; *ES* II: 19

CROSS REFERENCES: cc. 659–661

COMMENTARY

Tomás Rincón-Pérez

Continuing formation

The necessity of continuing education, in all the institutional levels, since Vatican Council II, has been one of the most deeply felt pastoral concerns of the Church. This is evidenced by two recent documents: Apostolic Exhortation *Pastores dabo vobis*, which besides concerning itself with formation for the priesthood and the seminarians, deals abundantly with permanent formation as a duty and right of every priest, whether young, middle-aged, or elderly;[1] and the Instruction of CICLSAL, of February 2, 1990, entitled "Orientations Regarding Formation in Religious Institutes"[2] which, besides concerning itself with the formation that has to be accomplished in the novitiate and during temporary profession, also broadly treats continuous formation of the perpetually professed, in accordance with these suggestions of Pope John Paul II to the religious of Brazil on July 11, 1986: "Every religious institute has, therefore, the task of drafting and carrying out a program of continuing formation appropriate

1. Cf. RINCÓN-PÉREZ, "Sobre algunas cuestiones canónicas a la luz de la Exh. Ap. *Pastores dabo vobis*," especially the section "La formación permanente y la dimensión de justicia inherente al ministerio sacerdotal," in *Ius Canonicum* 33 (1993), pp. 325–332.
2. Instr. *Potissimum Institutioni*, 82 (1990), pp. 472–532.

for all its members. This program would pertain not only to the formation of the intelligence, but also to the whole person, principally in the spiritual dimension, so that every religious can fully live his or her own consecration to God in the specific mission that the Church has conferred."[3]

Just like the priests or religious, or any other baptized adult who desires faithfully to fulfill an ecclesial mission, the members of secular institutes should not limit their formation—in the various dimensions of their lives: human, spiritual, intellectual, apostolic, and professional—at the time of temporary incorporation, especially instituted for that formation, but rather they should continue with it during the time of perpetual or definitive bonds.

Paragraph 1 refers to the necessity of carrying out that continuing formation in all the institutes and places the task of appropriately creating a program of specific ways and plans of formation for this on the constitutions. That generic necessity, however, implies two specific duties, pursuant to the provisions of § 2: the duty of all the members to form themselves in human and divine affairs, and the duty of the moderators to take these matters seriously; that is, to put into place appropriate means to make that continuous formation effective. The task of continually forming oneself in divine affairs appears first as a duty based on the bond that gives rise to incorporation into an institute, that is, in the commitment undertaken to serve the spiritual and apostolic aims of the institutes in the best possible way. It would be fairly impossible to accomplish this duty if each of the members were not to have the right to have the institute furnish them appropriate means and times to carry out that continuous formation. The moderators must respond to that right and they must take seriously that continuing spiritual formation. (It is supposed that the institute has already fulfilled it through means established in the proper law).

In respect to the content of that continuing formation, the legal norm distinguishes between formation in *divine matters* and *human matters*. By *divine matters* it seems that they should not only encompass spiritual life in the strict sense (cf. 719), but also the knowledge of Christian doctrine, appropriate to the intellectual condition of each member, without discarding theological knowledge, as well as apostolic and evangelizing formation according to the proper nature and mission of each institute. Each of the members of the institute is responsible for each one of these aspects, and so is the institute that is created with the mission to impel the life of consecration and secular apostolate.

Human matters must encompass the vast field of temporal human activities, in which the secular institutes, by their very nature, are immersed. In effect, they are called to exercise their apostolic mission *in*

3. Cf. JOHN PAUL II, *Allocution* to the World Conference of Secular Institutes, July 28, 1980, in *AAS* 72 (1980), pp. 1018–1024.

saeculo et ex saeculo, that is, within the world and from its own temporal structures, from the most varied professions or human activities. Therefore, their spiritual and apostolic formation should be accompanied by an appropriate formation in that field of human life where his mission is realized, trying to ennoble it and direct it toward the order of creation, so that, thus ordered, everything extends out to Christ as its head. To be effective in the evangelizing mission, each one must have a competent level of learning and experience in a proper field of endeavor: in any of the sciences, arts, professions, or other suitable activities. Hence, there is the duty of each member to be formed also in *human matters*, and the duty of the moderators to impel that formation, though it is not the duty of the institute as such to impart that formation, which ordinarily has its own human channels.

Inasmuch as the clerical members of an ordinary secular institute are incardinated in the diocese to which they have been assigned, their formation for the priesthood and their later continuing priestly formation are the responsibility of the bishop and the diocese in which they exercise their ministry. The matter is governed by the universal and particular norms regarding priestly formation. But, in the exceptional case of being incardinated in their own institute, it will be the institute's responsibility to establish appropriate norms for their priestly formation, both initial and continuing, in a form analogous to the provisions of c. 659 § 3 concerning clerical religious.

725 **Institutum sibi associare potest, aliquo vinculo in constitutionibus determinato, alios christifideles, qui ad evangelicam perfectionem secundum spiritum instituti contendant eiusdemque missionem participent**

The institute can associate with itself, by some sort of bond determined in the constitutions, other members of Christ's faithful who seek evangelical perfection according to the spirit of the institute.

SOURCES: c. 500 § 3; *CSan* 7a, 9a; *AA* 4

CROSS REFERENCES: c. 303

COMMENTARY

Tomás Rincón-Pérez

The association of other faithful with the institute

The Apostolic Constitution *Provida Mater Ecclesia* of Pius XII, which officially brought forth the secular institutes and established their special law, already referred to those members of the institutes *strictiore sensu sumpta* in article III, regarding sacred bonds. It announced the possibility of the existence of other members in a broader sense. A year later, they were explicitly referred to in the Instruction *Cleri sanctitati* of the Sacred Congregation for Religious, upon whom competence was conferred regarding the recently created secular institutes. This is the literal text: "Possunt tamen admiti, ut membra latiore sensu accepta, et maiore vel minore vi seu intentione Assotiationis Corpori adscripta, sodales qui ad evangelicam perfectionem adspirent ipsamque in propia conditione exercere nitantur, etsi non singula consilia evangelica altiore gradu complectantur seu complecti valeant" [Nonetheless members can be admitted who have been accepted in a broad sense, and who more or less share the intention of the association's body, and who themselves aspire to evangelical perfection and strive to toil in their own state of life, even if the evangelical councils are not completed or followed to completion in the highest grade.] (*CSan* 7a).

What the drafter had envisioned in the constitutive stage of the secular institutes is now regulated in c. 725; besides those members in the strict sense, that is, those faithful who embrace the three evangelical counsels and who are fully incorporated into the institute, other faithful can exist who are associated with the institute with a bond whose nature

will have to be determined by the constitutions. It is a matter of the faithful who seek evangelical perfection according to the institute's own spirit and who desire to participate in its mission, but who do not fully embrace the three evangelical counsels because sometimes their own lives hinder such a commitment, as in the case of married faithful.

At first glance, it would be fitting to think that this deals with an analogous phenomenon of the third orders (cf. 303), but in reality a different ecclesial phenomenon is contemplated here. The third orders are autonomous associations of faithful, though they might participate in a specific religious spirituality as a characteristic and be subject to the higher direction of a religious institute. In contrast, the *other faithful* who are associated with a secular institute do not constitute a different association, but become members of the same associative entity, though with a bond different than that of members *strictiore sensu sumpta*, according to the terminology of *Provida Mater Ecclesia*. Obviously, that is not an obstacle for other faithful in the exercise of their freedom, to create and join a private or public association that has as its aim the search for holiness and the exercise of the apostolate in accordance with the spirituality of a certain secular institute.

726 **§ 1. Elapso tempore incorporationis temporariae, sodalis institutum libere derelinquere valet vel a sacrorum vinculorum renovatione iusta de causa a Moderatore maiore, audito suo consilio, excludi potest.**

§ 2. Sodalis temporariae incorporationis id sponte petens, indultum discedendi a supremo Moderatore de consensu sui consilii gravi de causa obtinere valet.

§ 1. When the time of temporary incorporation is completed, the member can freely leave the institute or can, for a just cause, be excluded from renewing the sacred bonds by the major Moderator after consultation with his or her council.

§ 2. A temporarily incorporated member who freely requests it can, for a grave reason, be granted an indult to leave the institute by the supreme Moderator with the consent of his or her council.

SOURCES: § 1: c. 637; SCRSI Decr. Dum canonicarurn legum, 8 dec. 1970, 3 (*AAS* 63 [1971] 318)
§ 2: *CAd* 14; SCR Decr. Religionum laicalium, 31 maii 1966, I, 3 (*AAS* 59 [1967] 362–364); SCRSI Decr. Cum superiores generales, 27 nov. 1969 (*AAS* 61 [1969] 738–739)

CROSS REFERENCES: cc. 688–689

COMMENTARY

Tomás Rincón-Pérez

Leaving the institute

This codified norm contemplates the three cases of leaving the institute. Each one follows a distinct juridical situation because the juridical government is also varied.

1) The free and voluntary leaving of the institute upon the conclusion of temporary incorporation. Given the nature of temporary incorporation, this case offers no canonical difficulty. From this point of view, the member is free to incorporate himself into the institute perpetually or definitively, and likewise he can leave it without canonical cause being required. Another matter is the moral and ascetical aspects that can affect the conscience of one who makes that decision.

2) The imposed leaving of the institute upon the conclusion of temporary incorporation. Operating here also is the factor of temporary bonds, which were envisioned to help greater maturation of the vocation and of the ultimate decision to become incorporated perpetually. Therefore, the norm leaves to the prudent judgment of the internal directors the decision to accept or deny renewal of sacred bonds. In the case of denial, however, the discretion of the directors is neither moral nor canonically absolute. It is subject to certain canonical rules that are established by universal law in the present canon, and others that may be, and perhaps should be, established by the proper law.

The universal law specifies these two requirements: *a)* that it be the major director after consultation with his or her council; and *b)* that there be just cause. It is the proper law's responsibility to establish who will be the competent major director and even to establish the procedures for the council as well as to specify some of the possible just causes that make exclusion from renewal of bonds advisable or necessary. It does not seem wrong, for example, to extend legal cause established for religious in c. 689 § 2 to secular institutes: physical or mental illness, even such illness contracted after profession can be a cause to not admit a religious to a new profession, except in cases where the illness was contracted through the negligence of the institute or as a consequence of the professed own work carried out in the institute. In any case, c. 726 does not expressly mention this cause nor does it refer to the norm for religious. For this reason it would also be inadmissible for the proper law of the secular institutes to consider the illness as a just cause to deny one the renewal of bonds, except, as was established in prior legislation (cf. c. 637 *CIC*/1917), if such illness had been fraudulently hidden or feigned.

3) Voluntary leaving during temporary incorporation, that is, while sacred bonds are in effect.

This third case is more complicated than the prior cases because leaving implies the dispensation from sacred bonds and consequently the loss of the secular consecrated condition. In the case of religious, that loss constitutes a true secularization, following the classical denomination. In this particular case, obviously there is no secularization because secularity is one of the essential elements that configure this class of institutes; however another essential element is lost: consecration, which implies the loss of the consecrated condition.

The steps to be taken and granting of the indult to leave are governed by the following rules fixed by universal law:

a) The request for the indult is a voluntary act of the interested party though it seems obvious that there has to be grave cause (required later in the codified norm) in order to obtain the indult. In any case, the literal provision of c. 726 § 2 differs from that of c. 688 § 2. In the case of religious, they must have grave cause to ask to leave the institute during tem-

porary profession, while in the case of secular institutes it is only required that the member asks *sponte* by his or her own will. The requirement of grave cause is situated in the aspect of who has to grant the indult. This nuance is substantially unimportant, but it could have formal importance because no grave cause would be required to be incorporated into the request for the indult.

b) The competent authority to grant the indult is always the general director, never another major director, whether it involve an institute of pontifical or diocesan right. In those last cases, the indult to leave does not need the confirmation of the diocesan bishop, as is the case in religious institutes (cf. c. 688 § 2).

c) This indult is a decisory act of the general director. Universal law, however, establishes that its validity is subject to the deliberative vote of the council. This avoids a decision, of such importance for the institute and the applicant for the indult, being made by only one person, though he is the general director. It is advisable to remember in this regard that according to a *Response* of the CPI, of July 5, 1985,[1] the superior has no right to cast a vote with the rest of the members of the council, not even to break a tie in voting.

d) Finally, the granting of the indult must be founded upon grave cause; the just cause of the prior case is not enough. Being an indeterminate concept, it falls to the general director and the council advisors to determine the gravity of the cause even in the case where those possible causes appear stated in the proper law.

727 § 1. **Sodalis perpetue incorporatus, qui institutum derelinquere velit, indultum discedendi, re coram Domino serio perpensa, a Sede Apostolica per Moderatorem supremum petat, si institutum est iuris pontificii; secus etiam ab Episcopo dioecesano, prout in constitutionibus definitur.**

§ 2. **Si agatur de clerico instituto incardinato, servetur praescriptum can. 693.**

§ 1. A perpetually incorporated member who wishes to leave the institute must, after seriously weighing the matter before the Lord, petition the Holy See through the supreme Moderator if the institute is of pontifical right; otherwise the indult can also be obtained from the diocesan bishop, as determined in the constitutions.

§ 2. For a cleric who is incardinated in the institute, the provision of can. 693 is to be observed.

SOURCES: § 1: c. 638

CROSS REFERENCES: cc. 691, 693

COMMENTARY

Tomás Rincón-Pérez

Indult for leaving the institute

1. God calls some faithful in a special way to profess the evangelical counsels in an ICL, whether religious or secular (cf. c. 574). *Perpetual* incorporation is founded, therefore, on the irrevocability of divine vocation, and creates, at the same time, a bond that is itself indissoluble. For this reason, leaving the institute can never be sought as a right but as a grace through an indult granted by competent authority.

2. In the case of religious institutes, the professed in perpetual vows may not request the indult unless it is accompanied by very grave cause considered before God. In the case envisioned here, the petitioner of the indult is only a member incorporated *perpetually*, that is, one who has truly undertaken a bond, which is, in principle, indissoluble. In this regard, it does not seem that *definitive* incorporation may be compared to *perpetual* incorporation, for though the former carries the duty of always and permanently renewing bonds, the bonds do not cease being temporary and, in fact, might not be renewed, and in such case neither indult nor dis-

pensation would be necessary—from the canonical point of view; the duty to renew them would be situated, rather, in the moral sphere (cf. c. 723).

On the other hand, the rigor with which the fact is contemplated in religious institutes is considerably attenuated with respect to perpetually incorporated members in a secular institute, *very grave causes* not being required but rather that the matter be seriously considered before God before the indult is petitioned.

3. There are also notable differences between the procedures applied to religious. The procedure for religious (cf. cc. 691–692) is developed in three phases. First, the matter is put before the general superior who, along with his council, studies the petition and transmits it with his opinion and that of his council to the competent authority. In the second or decisory phase, that is, the granting of the indult, competency lies with the Apostolic See in the case of institutes of pontifical right, and if it is an institute of diocesan right, the diocesan bishop *can* also grant it. The third phase consists of the notification of granting of the indult: the lawfully granted indult will not have any effect if the religious rejects it in the act of notification of the grant of indult. It is a last attempt of the Church to salvage the irrevocable commitment that religious undertook upon perpetual profession.

Canon 727 only contemplates one of the phases: the petitioner directs his application of leaving to the Apostolic See, through the general director, if it is an institute of pontifical right, but, if otherwise, he may also direct the application to the diocesan bishop, as provided in the constitutions. In the case of the secular institutes, therefore, it is not envisioned nor is it canonically required that the supreme moderator and his council deliberate and give their opinion; nor is the indult for leaving ineffective if it is rejected by the interested party at the time of notification.

4. Paragraph 2 contemplates the special case of a clerical member who asks to leave. It is well known that the clerical members of secular institutes ordinarily are incardinated in the diocese to which they have been assigned. The case that is contemplated here, however, is of clerics who, by grant of the Apostolic See, are incardinated in their own institutes (cf. c. 266 § 3). The norms that govern the religious apply to clerical members of the secular institutes also. Canon 693 provides that the indult for leaving will not be granted before the cleric finds a bishop who will incardinate him in his diocese or at least admit him on probation. If he is admitted on probation, after five years have passed, he will be incardinated *ipso iure* in the diocese, unless the bishop has refused him.

Through these precautions the existence of "wandering" or acephalous clerics is avoided, in conformance with the provisions in c. 265. Certainly the norm in effect avoids it better than did c. 641 of the *CIC*/1917, but in our opinion, there still exists an open door to that possibility: when the bishop receives the cleric *ad experimentum* and refuses him after-

ward. In this case, the priest in question does not logically seem to be incardinated in or joined to the institute he was separated from by the indult, nor is he incardinated *ipso iure* in the diocese upon being rejected by the bishop; therefore if the situation of not being incardinated is anomalous, then so is being joined to service in an institute from which he is lawfully separated.

728 Indulto discedendi legitime concesso, cessant omnia vincula necnon iura et obligationes ab incorporatione promanantia.

When an indult to leave the institute has been lawfully granted, all bonds, rights and obligations deriving from incorporation cease.

SOURCES: c. 640 § 1

CROSS REFERENCES: cc. 692, 701

COMMENTARY

Tomás Rincón-Pérez

Effects of the indult for leaving the institute

Incorporation, whether temporary or perpetual, into a secular institute simultaneously carries with it double bonds: sacred bonds through which the member embraces the evangelical counsels of chastity, poverty, and obedience, and becomes constituted in the condition of secular consecrated; and the juridical bonds with the proper institute from which flow the mutually correlative rights and obligations for the achievement of the aims of the institute and for the realization of personal vocation.

The lawfully granted indult for leaving, like lawful expulsion (c. 701), also simultaneously produces a double effect: the cessation of sacred bonds and the consequent loss of the condition of consecrated, as well as the rupture of the juridical bond with all its contained rights and duties. With respect to the perpetually incorporated, the indult for leaving is granted by the Apostolic See or the diocesan bishop, as appropriate (cf. c. 727). In contrast, for the temporarily incorporated competence falls on the general director with the consent of his council (cf. c. 726). Thus it is appropriate to emphasize that the granting of the indult necessarily entails the cessation of sacred bonds. Nonetheless, the aforesaid indult is not the cause of the dispensation but only its premise. The law itself produces the dispensation at the moment the condition of leaving takes place. This means that one could have the faculty to grant the indult without its necessarily implying faculty to dispense from vows or other sacred bonds. Keep in mind in this regard that the moderators of secular institutes, though they are clerics and of pontifical right, generally do not enjoy the power of governance.

In contrast to c. 692, the effectiveness of the indult for leaving a secular institute is not subject to the condition that the act of notification be accepted or rejected by the interested party. Therefore, it is governed by the general norm of c. 62 regarding rescripts.

729 **Sodalis ab instituto dimittitur ad normam cann. 694 et 695; constitutiones praeterea determinent alias causas dimissionis, dummodo sint proportionate graves, externae, imputabiles et iuridice comprobatae, atque modus procedendi servetur in cann. 697–700 statutus. Dimisso applicatur praescriptum can. 701.**

A member is dismissed from the institute in accordance with the norms of cann. 694 and 695. The constitutions are also to determine other reasons for dismissal, provided that they are proportionately grave, external, imputable and juridically proven. The procedure established in cann. 697–700 is to be observed and the provisions of can. 701 apply to the person who is dismissed.

SOURCES: —

CROSS REFERENCES: cc. 694, 695, 696, 697–701

COMMENTARY

Tomás Rincón-Pérez

Dismissal from the institute

Dismissal of a member from a secular institute is governed by practically the same norms established for the dismissal of religious; that is, the same causes and procedures apply. Only an express reference to c. 696 is missing, leaving the determination of other possible causes for dismissal to the constitutions. This does not stand in the way of the majority of those causes to be stated by the proper law except, obviously, for "unlawful absence from the house" (see commentary on c. 714).

We analyze below the nature of the decree for dismissal, its procedures, and its juridical effects applied to the case of the secular institutes.

1. *Automatic dismissal* (c. 694)

In accordance with the proper law, any member who has committed the limited acts prohibited in c. 694 will be dismissed automatically from the institute, without any action being taken by the director, except for making a juridical report of the act.

The first act is categorized as *notorious defection from the Catholic faith.* Apostasy, heresy, and schism (c. 751), inasmuch as they are offenses sanctioned by excommunication *latae sententiae* (c. 1364 § 1), undoubtedly constitute a case of automatic dismissal if they imply notoriety *de iure* or *de facto*. We do not think that other types of formal abandonment of the Catholic Church (cf. c. 1117) or notorious abandonment of the Catholic faith (cf. c. 1071 § 1,4°) which do not imply a delict should be considered cases for automatic dismissal. Given that this is an extremely rigorous norm—automatic dismissal—it ought to be interpreted restrictively in accordance with the rule of c. 18 without diminishing the possibility that other types of notorious abandonment of the faith which do not constitute an offense could yet be classified by the proper law as cause for facultative dismissal.

The other act is *to have contracted marriage or to have attempted to do so, even civilly.* Not being a cleric, a member of a secular institute can validly contract canonical marriage. This act, even attempting civil marriage, are not classified delicts but are sufficient to trigger automatic dismissal considering that the member has assumed the evangelical counsel of chastity with a sacred bond, which entails an obligation to observe perfect continence in celibacy (c. 599).

Once one of these facts is verified, the member is dismissed *ipso facto* from the institute. This circumstance, however, given its importance, must be juridically reported. Accordingly, the major director with the council will issue a formal declaration of the fact without delay. (The proper law will determine the rank of major director as well as how the council will proceed).

2. *Obligatory dismissal* (c. 695)

Obligatory dismissal is determined by the commission of a series of offenses expressly stated in c. 695. We name them *obligatory* because once an external violation of the law (the objective element of the offense) is verified, and its imputability (the subjective element) is established, the director *must* proceed with issuing the decree of dismissal.

Here dismissal does not occur automatically, but is necessary as an administrative action with certain analogies to a judicial process, in the sense that, at least, sufficient measures are taken to guarantee justice for the accused, the institute itself, and the rest of its members.

The offenses whose commission makes dismissal obligatory are exclusively the following:

a) The various classified offenses stated in c. 1397, that is, homicide, kidnapping by force or fraud, and grave mutilation of a human being. Note that the decree of dismissal operates independently of the penalties

assigned to each offense; thus, it is important to clearly specify the classified offense and its imputability.

b) Canon 1398 classifies consummated abortion as an offense. According to a response of the CPI, this means the voluntary causing of the death of a fetus by any means from the very moment of conception, and therefore it is irrelevant to the establishment of the offense, if the death is caused inside or outside the womb.[1] It is well known that the penal sanction for this gravest of offenses is excommunication *latae sententiae*. It is advisable to note again, however, that this offense, for the purposes of dismissal from the institute, operates independently of the penal sanction incurred by the offender. What is important to those purposes is the establishment of an external violation of the law and its imputability, not its punishability. Said another way, what might not be punishable for the attenuating circumstances of c. 1324 § 1—which act as extenuating circumstances regarding the *latae sententiae* penalties, c. 1324 § 3—can still be the cause for dismissal. In sum, the offense of abortion acts in our case as cause that brings the gravest of disciplinary sanctions and is very similar to an expiatory penalty *ferendae sententiae*. Therefore, it does not automatically cause dismissal but rather it requires the adjudicative activity of the director of the institute, which is analogous to the task of a judge.

c) Finally, the various types of offenses specified in c. 1395 related to the sixth commandment of the Decalogue. Just like the penal law, these offenses are directed at the cleric, but c. 695 applies them to religious—and, by reference to the present canon, to the members of the secular institutes—but only for the purposes of the decree of dismissal. If the member is also a cleric, obviously the other penal effects apply as well.

The first classified offense contemplated in c. 1395 is *concubinage*, which entails a stable sexual relationship with a person of the opposite sex. One would think that this case would also cover a stable sexual relationship with a person of the same sex. Anyway, such a case would be a part of the second classified offense pointed out in the penal norm: that which poses a permanent and scandalous situation in another external sin against the sixth commandment of the Decalogue. Finally, c. 1395 § 2 lists classified offenses against the sixth commandment that, in contrast to the prior ones, do not have a permanent or stable character, but rather are punishable acts as long as they have been committed with violence or threats, with notoriety, or committed with minors younger than sixteen years of age.

Regarding the first two kinds of offenses, once the act and imputability are verified, the religious—and the member of the secular institute, in this case—must be dismissed. This is a matter of a drastic disciplinary

1. Cf. *Respuesta* of May 23, 1988, in *AAS* 80 (1988), p. 1918. Cf. A. MARZOA, "Extensión del concepto penal de aborto," in *Ius Canonicum* 29 (1989), pp. 577–585.

measure similar to the expiatory penalty of dismissal from the clerical state (c. 1336 § 1,5°), whose remission does not depend on the cessation of the contumacy.

On the other hand, in the case of the third classified offense, dismissal can be necessary or not; therefore the law permits the director, before proceeding with dismissal, to judge if the accused can amend, justice can be served, and the scandal can be redressed through less onerous ways.

Once the classified offenses that motivate the dismissal have been established, paragraph 2 of c. 695 regulates the first phase of an administrative proceeding that will conclude in the decree of dismissal. In that first phase, the major director of the wrongdoer fulfills functions analogous to those of a judge instructor. Perhaps for that reason the law does not require the director to act with his council; though nothing impedes the director's asking it for advice.

3. *Facultative dismissal*

It is called *facultative* because, in contrast to the prior case, though certain causes are demonstrated and verified, the director is not obligated to decree dismissal because the degree of incorrigibility shown by the accused first must be assessed.

Canon 696 establishes a broad list indicating the most important causes that can lead to the dismissal of a religious. They are not directly applicable to the case of the secular institutes because c. 729, which we are commenting on, expressly mandates that the constitutions of each institute determine those other possible causes of dismissal. It will be difficult, however, for the constitutions to avoid making their own many of the causes indicated in the mentioned canon. For example, the pertinacious defense of doctrines condemned by the Magisterium of the Church or the diffusion of those same doctrines, though not defended, keeping in mind in this respect that "the Church's Magisterium intervenes not only in the sphere of faith, but also, and inseparably so, in the sphere of morals..." (*VSp*110).[2] And not only do the *defense* or *diffusion* of doctrines contrary to the Magisterium, in the purely intellectual level, constitute causes for dismissal, but also the actual adherence to ideologies condemned by the Magisterium because of their materialism or atheism.

In any case, whatever causes are established by the constitutions, they have to have the characteristics indicated by the canon. Specifically, they have to be *a) proportionally serious*, that is, serious according to the

2. Cf. also the Instr. *Donum Veritatis*, May 24, 1990, in *AAS* 82 (1990), pp. 155ff. Cf. J. ERRÁZURIZ, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 155.

canonical situation of the accused, analogous to the least grade of seriousness required for the dismissal of a religious of temporary vows (cf. c. 696 § 2); *b) external* in the sense that they go beyond the inner world of the subject and are provable in an external forum; *c) imputable*, that is, attributable to the free and voluntary action of the accused; and finally, *d)* the commencement of the dismissal proceeding requires the causes alleged be juridically proven; that is to say, that the action is not founded on mere suspicion, nor on merely provable causes, but rather they must be accompanied by convincing proof of the facts and responsibility thereof.

4. *Procedural phases*

Canon 697 confers on the major director the faculty of commencing the proceeding, which obviously does not impede the general director, in the face of the major director's not taking action, from ordering him to do so or from commencing the proceedings himself.

Once the major director, with the advice of the council, decides to initiate the dismissal proceeding, through the instrument of the canonical admonitions, not only is a demonstration of the facts pursued, as well as their gravity and imputability, but also a demonstration of the individual's correction or, in the opposite case, his incorrigibility in a degree sufficient for dismissal.

The second procedural phase takes place at the headquarters of the general director, with the council, who has the ultimate responsibility to issue the decree of dismissal. Note that from the commencement of the proceeding, in its first phase, the law takes special care to guarantee the right of defense. Upon the regulation of the decisory act of dismissal the measures taken to guarantee the rights are greater still by submitting the proceeding in its decisory phase to controls of validity, which are necessary to safeguard the rights of the accused in a matter of so much importance to his life. This does not impede, however, directors from acting with the firmness required to protect the good of the institute and the Church itself when it has been gravely damaged by the accused's behavior, which is sometimes delinquent.

5. *The decree of the dismissal*

a) Requirements for validity

The final decision to expel a member of the institute is made collegially by the general director and his council that technically acquires the form of decree whose validity, effectiveness, and possible appeal are regulated in cc. 699–700.

In light of the historical changes suffered by those canons,[3] it appears clear that the general director, with the council, is the author of the decree of dismissal, though its validity is subject to a series of requirements that affect both the proceeding and the specific content of the decree. In effect, the general director or supreme moderator has to act with the council (which is made up of at least four members so as to avoid ties in voting since the taking of action must be collegial.) Generally, in accordance with c. 627 § 2, the council is not configured as an organ of collegial governance, though there might be numerous cases in which its consent might be required. In the present case, however, the law not only demands the consent of the council, but as an all special rule, it configures the council as a college made up of the general director and at least four advisors, who act collegially. Therefore, the decree of dismissal is not a personal act of the director but rather is a collegial act.

In regard to the content of the decree, for its validity it should be at least summarily motivated *in iure et in facto* and indicate the dismissed member's right to appeal to the competent authority within ten days of having received notification.

b) *The requirement of confirmation*

The decree of dismissal issued collegially by the supreme moderator and the council is an act valid and complete in itself if it fulfills all the formal and substantive requirements. It is not effective and has no effect until it is confirmed by the Holy See or the diocesan bishop, according to the nature of the institute.

The requirement of confirmation was a much-debated matter during the preparatory phase of the Code. For example, in the *Schema* of 1980 such a requirement did not appear, it being argued that by requiring the confirmation of the Holy See, the possible appeal of the decree could only be brought before the Apostolic Signatura and not *circa meritum causae* but only *circa violationem legis*, which entailed a greater defenselessness for the affected party.[4]

At the bottom of those fears, however, was an incorrect technical configuration of the act of confirmation. Confirmation does not change the responsibility for making the confirmed act. The decree of dismissal confirmed by the Holy See continues as an act of the supreme moderator and the council that may be appealed to the Holy See that has confirmed it.[5] In this way the guarantees of defense of the affected party are preserved while the seriousness of the proceeding is maximally protected,

3. Cf. *Comm.* 13 (1981), pp. 342–358; 15 (1983), p. 79. Cf. V. GÓMEZ-IGLESIAS, "El Decreto de expulsión del c. 700 y las garantías jurídicas del afectado," in *Ius Canonicum* 27 (1987), pp. 653, 660.
4. Cf. *Comm.* 13 (1981), p. 357.
5. Cf. V. GÓMEZ-IGLESIAS, "El Decreto de expulsión...," cit., p. 668.

and in large measure any possible arbitrariness is avoided. No doubt these were the reasons that motivated the legislator finally to opt for the necessity of confirmation.

c) *The notification to the interested party*

After the authentic *Response* of the CPI of March 21, 1986, which was confirmed by the *Response* of May 17, 1986,[6] there was no longer doubt that the notification to the affected party would have to be made after confirmation by the Holy See. The following order must be followed: the supreme moderator with the council issues the decree of dismissal in the form and manner stated above; immediately thereafter the documents are sent to the Holy See for confirmation; and if the decree is confirmed, the interested party is notified, and has ten days from the time of notification to appeal.

d) *The suspensory recourse introduction*

Here, once again, questions regarding the scope of confirmation cause more doubts to surface—not regarding the right to appeal, which is unquestionable, but regarding the authority before which the recourse could be brought. It being understood that confirmation is a constitutive element of the decree of dismissal, the issuing authority for the decree would also be the confirming authority and thus the recourse could not be brought before it but rather before the Apostolic Signatura. But as we have pointed out before, confirmation being a controlling act of a decree already constituted, there is no technical difficulty in bringing the recourse before the confirming authority.

This was finally decreed by the authentic *Response* of the CPI, March 21, 1986.[7] The competent authority, moreover, to uphold the recourse is CICLSAL (cf. *PB* 108). Once the recourse has been substantiated, there is nothing to prevent another appeal to the Apostolic Signature for the violation of the law *in decernendo vel in procedendo* (*PB* 123).

e) *The effects of the decree of dismissal* (c. 701)

According to c. 729, c. 701 is also applied to the dismissed member of a secular institute. Consequently, every lawful dismissal, that is to say, one that has fulfilled all the requirements for formal and substantive validity, *ipso facto* causes the cessation of sacred bonds and the consequent breaking of the juridical bond produced by incorporation into the institute. Note that it is not the authority that issues the decree of dismissal (with or without the power of governance) that gives dispensation from the vows or from sacred bonds of another nature, but *ipso facto* they stop by rule of law and by the authority that made the law.[8]

6. *AAS* 78 (1986), p. 1323.
7. Ibid. Cf. *Ius Canonicum* 27 (1987), p. 621.
8. Cf. *Comm.* 13 (1981), p. 359.

In the case of a priest, the loss of the condition of secular consecrated and the breaking of the juridical bond that was established by incorporation into the institute, with its content of rights and duties, does not entail the loss of the clerical state. Canon 701 contemplates and regulates this new situation by departing from the assumption that religious are incardinated in their own religious institutes. In the secular institutes there is an inverse assumption: ordinarily they are incardinated in the diocese in which they have been ordained. In this case, dismissal produces no effect on incardination; but if they were to have been specially incardinated in the same institute, the measures of cc. 701 and 693 would have to be applied to the case, thus tending to avoid, in the last instance, the existence of wandering or acephalous clerics, in conformity with the provisions of c. 265.

Since the situation of being a dismissed member occurs *ipso facto*, it can be asked what happens if this new situation brings with it an automatic excardination from the institute—in the case of a cleric that was incardinated in the institute—without a subsequent incardination; or if, on the contrary, the bond of incardination in the institute continues—of the one separated by expulsion—while not producing a new incardination.

This problem did not go unnoticed in the preparatory works of the Code,[9] nor, in our opinion, is it appropriately resolved by c. 701. Therefore, it is a question open to a greater and deeper doctrinal search. The situation of being incardinated in the institute from which one has been dismissed is surely an anomalous situation, but so is an automatic excardination without an immediate subsequent incardination.

9. Cf. ibid.

730 **Ut sodalis instituti saecularis ad aliud institutum saeculare transeat, serventur praescripta cann. 684, §§ 1, 2, 4 et 685; ut vero ad institutum religiosum vel ad societatem vitae apostolicae aut ex illis ad institutum saeculare fiat transitus, licentia requiritur Sedis Apostolicae, cuius mandatis standum est.**

For a member to transfer from one secular institute to another, the provisions of cann. 684 §§ 1, 2 and 4 and 685 are to be observed. In order, however, that a transfer be made to a religious institute or a society of apostolic life or from those to a secular institute, the permission of the Apostolic See is required, whose instructions are to be followed.

SOURCES: —

CROSS REFERENCES: cc. 684 §§ 1, 2, 4 et 685

COMMENTARY

Tomás Rincón-Pérez

Transfer to another institute

The former discipline, which only envisioned the existence of religious institutes of consecrated life, prohibited the passing from one religious institute to another, in all cases, without the authorization of the Apostolic See. Currently, pursuant to cc. 684–685, an administrative decentralization has occurred in the sense that previous authorization of the Apostolic See is not required for some cases, but rather the internal superiors of both institutes are the ones who grant the transfer from one institute to another. The authorization of the Apostolic See is still required in other cases.

With this general principle, however, it must be kept in mind at the same time that in the current law two different forms of consecrated life exist (the religious institutes and the secular institutes) as well as another form of apostolic life equivalent *in iure* to consecrated life: the societies of apostolic life.

In view of this, c. 730, by reiterating what is already regulated in c. 684 § 5 from the perspective of religious and in c. 744 § 2 from the perspective of the societies of apostolic life, explicitly contemplates three cases: *a)* the transfer from one secular institute to another secular institute; that is to say, the transfer that is realized between institutes that con-

stitute secular consecrated life; *b)* the passing between specifically distinct consecrated institutes; that is, the transfer from a secular institute to a religious institute, or the inverse, from a religious institute to a secular institute; and *c)* the transfer from a secular institute to a society of apostolic life, or the inverse, from a society of apostolic life to a secular institute.

The same legal principle rules these last two cases: permission is required from the Holy See, whose instructions must be followed. The reason behind this requirement lies, no doubt, in the profound changes of canonical situation that these transfers imply: from being a *secular* consecrated to being a *religious* consecrated, or from not contracting sacred bonds to contracting them.

On the other hand, the first case, that is, the transfer between institutes or societies of the same nature or identical form of life, does not entail such a radical change in the canonical situation, so the involvement of the internal superiors of the respective institutes was considered sufficient.

The case of the secular institutes, which concerns us here, is ruled by the norms of cc. 684 and 685, *mutatis mutandis*, that is, to the extent that they are applicable to secular institutes. Accordingly, the following general rules can be established:

a) It is not necessary to turn to the Holy See for a transfer from one secular institute to another. The supreme moderators of the institutes *a quo* and *ad quem* can grant the transfer as long as they have the consent of their respective councils. In every case, however, it is a question of the transfer of a member perpetually incorporated into the institute. Therefore, temporarily incorporated members are not included in this case since there is a simpler way for them to transfer to another institute, considering that having been bound by a prior bond does not constitute an impediment to being admitted to initial probation (cf. 721). This same consideration could extend to definitively incorporated members, because the bonds that entail this type of incorporation do not stop being temporary even though they might have been renewed. Anyway, it must be kept in mind whether, for these purposes, the constitutions have put definitive incorporation on the same level as perpetual incorporation (cf. c. 723 § 4).

b) Before being admitted to perpetual incorporation (or definitive incorporation) in the new institute, there first must be an appropriate probationary period of at least three years. Starting from this legally fixed temporal minimum, it is left to the proper law of the new institute to determine the duration and way of completing the probation. Once that time of probation has run, incorporation into the new institute is not automatic but depends on two factors: that the member wants to be incorporated into the new institute and that the competent directors admit the person. Otherwise, if the member refuses or the competent directors do not admit

the person, he or she must return to the first institute unless an indult of secularization has been obtained.

c) During the probationary stage, the juridical situation of the interested party is the following: regarding the first institute, the rights and obligations that he or she had remain suspended, but sacred bonds remain in force. In regard to the new institute, from the beginning of probation the person is obligated to observe its proper law in those aspects that do not affect the sacred bonds, for in our view they remain in force with all the determinations that were made when the bonds were embraced.

Once perpetual or definitive incorporation into the new institute is had, the preceding sacred vows, rights and obligations cease, and the new ones come into force.

SECTIO II
De societatibus vitae apostolicae

SECTION II
Societies of Apostolic Life

731 **§ 1. Institutis vitae consecratae accedunt societates vitae apostolicae, quarum sodales, sine votis religiosis, finem apostolicum societatis proprium prosequuntur et, vitam fraternam in communi ducentes, secundum propriam vitae rationem, per observantiam constitutionum ad perfectionem caritatis tendunt.**

§ 2. Inter has sunt societates in quibus sodales, aliquo vinculo constitutionibus definito, consilia evangelica assumunt.

§ 1. Societies of apostolic life approximate to institutes of consecrated life. Their members, without taking religious vows, pursue the apostolic purpose proper to each society. Living a fraternal life in common in their own special manner, they strive for the perfection of charity through the observance of the constitutions.

§ 2. Among these societies are some in which the members, through a bond defined in the constitutions, undertake to live the evangelical counsels.

SOURCES: § 1: c. 673 § 1
§ 2: *PC* 1, 12–14

CROSS REFERENCES: cc. 573, 603, 604, 607, 710

COMMENTARY

Jean Bonfils, sma.

I. HISTORICAL INTRODUCTION

1. If attention is paid to the definition in the *Schema canonum* of 1977, which considered the common life without vows in imitation of the

religious life-style as the fundamental characteristic of these societies, then we must go back to their origins in the 4th Century when St. Eusebius, Bishop of Vercelli, gathered together secular priests to live with him in common under one rule. Other bishops later imitated this example: St. Augustine, St. Fulgentius of Ruspe, Faustinus and Rufinus in North Africa, Chrodegang in Metz, and Leo and Gregory the Great in Rome. The secular canonesses who had received a rule of life at the council of Aix-la-Chapelle in 816 belong to the exact same tradition. Further, by-passing the Brothers and Sisters of the common life, we come to the benedictine Oblates of St. Frances of Rome (1433), the Oblates of San Carlos in Milan (1578), and the secular priests of the Christian Doctrine of César de Bus, on the Îsle sur Sorgue (1592). Almost all of these groups or institutes have evolved into religious institutes or else they passed away during the Protestant Reformation.

2. On the other hand, if we look from the perspective of the definition that c. 731 of the Code offers, we see that the establishment of masculine SALs is unquestionably attributable to St. Philip Neri when the Oratory that he founded in Rome was approved by Gregory XIII on July 15, 1575. Regarding the feminine societies, St. Vincent de Paul and St. Louise de Marillac can be considered as the initiators, and the Daughters of Charity that they founded can be considered, in some ways, as the prototype of the SALs for women. For all of them, men and women alike, indisputable priority is given to the apostolate, whether in the form of direct evangelization or in the form of service to the poor. Everything in the institute should be understood, lived, and organized according to the apostolate. Beginning with St. Philip Neri two great trends can be distinguished: the trend that has come to be called the "French school of spirituality," which includes the Oratorians of Bérulle, the Lazarists of St. Vincent de Paul, the Eudists, the Sulpicians, and the trend that is rooted in the missionary tradition of the Seminary, which afterwards became the Society of Foreign Missions of Paris, founded in 1660. From this tradition the exclusively missionary SALs *ad gentes* arose in the 19th and 20th centuries. These two trends are clearly marked by their priestly and missionary character.

Regarding the feminine SALs, it is necessary to recognize that they have not had the same success. Whether this is because, having somewhat devalued the notion of apostolate in the pragmatic sense, these SALs have found it necessary to secure for themselves increased spiritual support in a canonical structure of religious life with simple vows, as was then said; or whether it is because—and this comes from the same mentality—the religious life, which is today replaced by a new idea of consecrated life, was erroneously considered as a state of life spiritually superior to all that the canonical framework of an SAL could offer.

II. THE PLACEMENT OF THIS SECTION IN THE CODE

In the *Schema canonum* of 1977, the present section was entitled "Institutes of Associated Apostolic Life."[1] It was included in section II of the second part of book II *"De Populo Dei,"* which concerned the institutes of consecrated life through profession of the evangelical counsels. Taking note of this situation, which had been foreseen several years before, the fifteen exclusively missionary SALs *ad gentes*, which were dependent on the Congregation for the Evangelization of the Peoples, had petitioned to be classified among the associations of the faithful. A special canon (c. 59 of the *Schema* of 1977 and c. 691 of the *Schema* of 1980) was also envisioned to permit these SALs to incardinate clerics into the association. Finally, and after an examination of the opinions opposed to the *Schema* of 1980, the *parvus coetus* in charge of this part of the Code rejected by seven votes and four abstentions the placing of the SALs among the institutes of consecrated life through profession of the evangelical counsels. On May 27, 1980, the title "Societies of Apostolic Life" was chosen from among the six that had been proposed; and on May 30 the third part of book II of the Code was adopted. Monsignor Castillo Lara responded to the exclusively missionary *ad gentes* SALs—which even after the promulgation of the Code were interrogated about their true canonical condition—in a letter dated May 2, 1984, directed to its President, the Rev. Fr. Gay, General Superior of the Missionaries of Africa (White Fathers), societies which already belonged *ipso facto* to the category of SALs without there having been the necessity of an explicit declaration of the general council or of consideration by the general chapter.

Once the *Schema* of 1977 was abandoned and the identity of the SALs was acknowledged, it was necessary to juxtapose the names ICL and SAL in another sixteen places in the Code, particularly in c. 298. In total seventy-five modifications were contributed to the original text. After the promulgation of the Code, the SALs were separated from the ICLs in the drafting of c. 730. These last corrections meant, then, among the other theological and canonical justifications, that the SALs, including those contemplated by c. 731 § 2, could not at all be canonically considered as ICLs.

1. Concerning this material, consult the following volumes of *Comm.*: 1 (1969), pp. 44–46, 85, 101–113; 2 (1970), pp. 173–176; 5 (1973), pp. 49, 63–69; 6 (1974), p. 201; 7 (1975), pp. 37, 77–80; 9 (1977), p. 229–230; 12 (1980), pp. 382–388; 13 (1981), pp. 377–401, 406–407; 14 (1982), pp. 377–389; 18 (1986), pp. 382–384, 386–388.

III. CANON 731

1. *The Latin word "accedunt"*

The Latin verb *accedunt* cannot have more than a weak meaning and cannot mean anything other than "next to" or "besides." Keeping in mind the specificity of the SALs with respect to the ICLs, for reasons already explained and for those that we will explain, there would be no room to translate the verb "*accedere*" as "to be similar to."[2] The verb "*accedere*" is not sufficient in itself to determine the meaning that should be given to it. A context is necessary to clarify its meaning. We will study that context in the present commentary. Thus, the meaning of that verb in c. 604 is not the same as it is in c. 731: the context of c. 604 is consecrated life, while c. 731 is not in this context.

2. *The apostolic end*

a) The members of the SALs pursue an apostolic end. This is shown by formally distinguishing the SALs from the ICLs, inasmuch as not all the ICLs are dedicated to works of the apostolate, and for those that are, their apostolate consists primarily of the witness of their consecrated life (cf. c. 673). If it is certain that apostolic action belongs to their very nature (cf. c. 675 § 1), it is equally certain that consecrated life has an aim and means that are specific to it, enumerated in c. 573, where the apostolate appears neither as end nor means. Otherwise, we point out in passing that the expression "apostolic religious life," despite its being quite in vogue in common language, appears as such neither in Vatican Council II nor in any document of the Magisterium after the Council.

b) The apostolate we are talking about here consists of every external activity of the Church—to distinguish it from its activities of prayer and contemplation—that extends the Kingdom of Christ throughout the whole world incorporating into that activity the "specific and permanent relationship that exists between the Gospel and the personal and social life of man" (cf. *EN* 29 and *AA* 2).

c) But that is not all. In effect, the apostolate, above all, is not a practice that must be carried out. It is a mission that the apostle is invited to

2. The author chose to translate the Latin "accedunt" as "asemejarse," in accordance with the official Spanish text ("se asemejan a"). In the text of the canon we have kept the term used in the English version chosen for this work. The author translates the expression "Institutis vitae consecratae accedunt societates…" as "À côté des instituts de vie consacrée prennent place les societés…" (Note of the Commission for the English Version of the Exegetical Commentary).

undertake: the mission of Christ. It is a river of love that descends from the "fountain of love": the Father. What we call "apostolic action" is the life and testimony of Christ that must course through us.

d) It will be useful to remember also that, following the oldest prophetic tradition, depicted by Jesus himself, service to our fellow humans truly is worshiping God. The line of argument developed by St. Thomas in regard to religious life dedicated to the apostolate finds its most direct application in the SALs (cf. *S. Th.* II–II, q. 188, a. 2).

e) Finally, an interesting note may be made on the evolution which the adjective "apostolic" has undergone in the history of the Church: an evolution that above all refers to the Twelve and their life-style in accompanying Jesus; to St. Paul; to the most literal imitation of what is written in the summaries of the Acts of the Apostles and in the mission passages of the synoptic Gospels. In these biblical references, which have also inspired the consecrated life, is a good place to pause and begin to see what the life-style of the members of the SAL might be, though cultural conditions have changed greatly since the first centuries of the Church.

3. *Fraternal life in common*

(For the content of this characteristic, see the commentary on c. 740.) It is a good idea to remember here, for spiritual reflection, the allegorical commentary on Lk 10:1 written by St. Gregory the Great. From the commentary it is shown that fraternal life in common is the ideal and the first place where the great commandment of charity is practiced and that without that charity one cannot be an apostle. "Our Lord and Savior, my beloved brothers, instructs us both with his words and his works. In effect, his very actions are precepts, for when He acts without speaking he teaches us what we are to do. Behold that he sent forth his disciples to preach in pairs because charity has two precepts: love of God and love of our fellow man. But there cannot be charity if there are fewer than two people, since one cannot properly call charity the love that one has for oneself, and love must be directed towards another for it to be charity. Thus, the Lord sent forth his disciples in pairs to make us understand, without saying a word, that he who does not have charity towards his fellow man must not in any way assume the function of preacher." (*PL* 76, 1139)

4. *Striving for the perfection of charity*

a) "[Their members], without taking religious vows, ... in their own special manner, strive for the perfection of charity through the observance of the constitutions." To move toward the perfection of charity is a requirement directed to every Christian because the Holy Spirit, which

dwells in each baptized person, causes this movement. This movement is stimulated and sustained by the "multiple counsels that the Lord had put before his disciples in the Gospel" (*LG* 42), in particular, chastity, poverty, and obedience. Those three last counsels are fundamental, not only because of a constant Church tradition, but also because of its indisputable anthropological foundation. Those three counsels encompass three great natural spheres of the existence of the human person: possession of the fruits of his work, conjugal love, and autonomy in his decisions. Other counsels exist as well: renunciation in all its forms; total surrender to Providence; uninterrupted prayer, and the others enumerated by the Decrees. *Ad gentes* 24 for missionaries and *Perfectae caritatis* 12–22 for priests.

b) In some SALs the three fundamental counsels are assumed through a bond established by the constitutions. They are *assumed* not *professed* since a profession, etymologically and canonically, constitutes a public act. Those other kinds of vows or bonds (oaths, promises, etc.), however, are private, not public, according to the definitions given to them by c. 1192 § 1, and they do not incorporate one into the society. This is the case, for example, of the Daughters of Charity of St. Vincent de Paul and of the Lazarists. Among the latter, it is the permission, given by the superior, to take vows which incorporate one into the Congregation of the Mission. With the Daughters of Charity vows do not incorporate but it is necessary to keep them in mind when dealing with a dismissal from the Company (cf. *Const.* 2, 5).

c) Thus this bond cannot be considered a sacred bond in the sense given to that expression by c. 573, since it is the act of profession, from the canonical point of view, that gives the bond its sacred character. We think that besides c. 731 § 2, in which the legislator avoids the expression "sacred bond," there are other canons (643 § 1, 3° and 721 § 1, 2°) that differentiate between the sacred bond proper to the ICLs—which require the practice of the evangelical counsels and cause incorporation into the institute—and the incorporation into an SAL.

d) We should not believe, however, that the founders of the SAL did not value an act so illustrative of the virtue of religion as that of taking vows. St. John Eudes said that, "they are much honored," and accorded them the "highest esteem." If one wanted to just enumerate some reasons why they did not assume them, one could, above all, speak of the moral and intellectual mediocrity in certain monasteries and about how, for this reason, at the beginning of the 17^{th} century in France the importance of the religious state was diminished. They had, moreover, a very high concept of the sacraments of baptism and holy orders. To be convinced of this, one only need read the works of St. John Eudes, Bérulle or Olier.

We might add some canonical reasons: the founders considered the legislation regarding religious life, in its time and especially on the subject of poverty and obedience, to be incompatible with the specific require-

ments of the apostolate, and more precisely, for some founders, it was incompatible with the requirements of the missionary apostolate. The missionaries, since their aim is to found new churches, should lead a life as similar as possible to that of a secular cleric, who is considered the primary cleric of these churches. The same thing occurred in the SALs founded in Europe for the formation of diocesan clergy. We might also say that the king of France, Louis XIV, used to grant favors and give gifts more easily to secular priests—considered more gallican—than to religious, whom he considered too ultramontane. This cause, economic and political at the same time, also had a role in the flowering of these societies throughout the 17th century in France.

Last and most simply, let us say that if those founders did not make vows it was because they believed that they had not received that grace, a conviction that underlines their lofty idea of the religious state, as for its relativity in relation to the diversity of the gifts of the Holy Spirit in the one Body of Christ.

e) To conclude, we will try to indicate one last characteristic that distinguishes the ICLs from the SALs in which the evangelical counsels are assumed. It is that the vows taken in the SALs do not occupy the same position that they do in the ICLs. In an ICL, vows are like a guiding axis for consecrated life and, plainly, for the affected person, as well. In an SAL, however, vows, if they exist, become a means at the service of something else: the apostolate. Some theologians of religious life have seen this problem and pointed out its repercussions in religious institutes dedicated to the apostolate.[3] In no way does this oppose the theological dimension of those vows for those who take them, but on the contrary, it implies a specific impact on the organization and functioning of a society, particularly in regard to obedience and poverty.[4]

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3. V. DE COUESNONGLE, "RP," in *Les veritables disciples. Assemblée plénière del Episcopat français. Lourdes 1984* (Paris 1985), p. 1122; J. AUBRY, SDB, ibid., p. 86; and, above all, the very interesting work of J.M.R. TILLARD, *Devant Dieu et pour le monde* (Paris 1977), pp. 87, 88, 92, etc.

4. We offer here a basic bibliography regarding the SAL: a) prior to the *CIC*: CH. LAUWERS, "Societates sine votis et status canonicus," in *Ephemerides Theologicae Lovaniensis*" 28 (1965), pp. 367–382; X. PAVENTI, *De juramento ac de titulo missionis* (Padova 1946); W. STANTON, *De societatibus sive virorum sive mulierum in communi viventium sine votis*, 2nd ed. (Halifax 1936); b) after the *CIC*: J. ARRAGAIN, "Est-il canoniquement possible que les sociétés de vie apostolique soient des instituts de vie consacrée?" in *Commentarium pro Religiosis et Missionariis* 68 (1988), pp. 31–35; J. BONFILS, *Les sociétés de vie apostolique* (Paris 1990); idem, *Le società di vita apostolica* (Brescia 1991); L. KAUFMANN, "Società missionarie," in *Dizionario degli istituti di perfezione* (Rome 1988); G. ROCCA, *Società di vita apostolica*, ibid.

732 **Quae in cann. 578–597 et 606 statuuntur, societatibus vitae apostolicae applicantur, salva tamen uniuscuiusque societatis natura; societatibus vero, de quibus in can. 731, § 2, etiam cann. 598–602 applicantur.**

Cann. 578–597 and 606 apply to societies of apostolic life, with due regard, however, for the nature of each society. For the societies mentioned in can. 731 § 2, cann. 598–602 also apply.

SOURCES: —

CROSS REFERENCES: cc. 29–34, 35–93, 94–95, 96–123, 124–128, 129–144, 145–196, 197–199, 200–203

COMMENTARY

Jean Bonfils, sma.

This canon makes reference to the canons of general law that deal with consecrated life through profession of the evangelical counsels and concerns itself with the general principles of legislation. We have previously pointed out as cross references the general rules that can affect the governance of the SALs. The references included in this canon to the law of the ICLs (the same may well be said of future references to the law regarding religious) are solely justified by the necessity of avoiding repetitions in the *CIC*; and they are explained by the institutional character of the SALs, which need to be provided with the indispensable structures for their governance. But they entail no kind of assimilation into the ICLs since for every reference the canon expressly states, "with due regard, however, for the nature of each society."

1. Everyone shall faithfully preserve the mind of the founders and their dispositions of the nature, purpose, spirit, and character of the society together with its sound traditions (c. 578).

2. After consulting with the Holy See (c. 579), a diocesan bishop can erect an SAL in his territory. The practice of the Holy See is to give a *nihil obstat*. In the absence of the *nihil obstat*, a canonical erection of a society made right after a simple consultation with the Holy See will be considered valid.

3. The aggregation of an SAL to another (c. 580) seems as though it should be included among the most important matters dealt with by the general chapter (c. 631 § 1), and the autonomy of each one established by c. 586 is not affected in any manner.

4. The proper law should regulate everything concerning the division of an SAL into parts, whatever the parts are called (c. 581).

5. The Apostolic See has reserved to itself mergers, unions, confederations, and federations between SALs (c. 582).

6. Also, the Holy See has reserved to itself the modifications that affect specific aspects of the norms that it has approved (c. 583).

7. Only the Apostolic See can suppress an SAL, even one of diocesan right, and make decisions concerning its temporal goods (c. 584). The suppression of one or another part of an SAL, however, belongs to the competent authority of the society itself (c. 585).

8. Each SAL enjoys rightful autonomy of life and, in particular, autonomy of governance (discipline and preservation of is own patrimony) (c. 586 § 1). It falls to the local ordinaries (c. 586 § 2) to protect and preserve that autonomy (see, in this regard, the commentary on c. 734).

9. Each SAL is foreseen as having a proper law, that is, a fundamental code (or constitution) whose approval and modification depends upon the Holy See, after a positive vote of at least two-thirds of the general chapter. Other norms are added to that fundamental code such as: general or particular directories; decisions of the general or provincial chapters; or else of the general, provincial, or local superiors; traditions and acknowledged usages; etc., established by the respective competent authorities of the society (c. 587).

10. There are clerical and lay SALs of pontifical right (cc. 589, 591, 593) and of diocesan right (cc. 579, 594, 595). All those SALs have to send a periodic report to the Holy See through the dicastery upon which they depend (Congregations for the Evangelization of Peoples, for the ICLs and SALs, and for the Eastern churches). It is asked of their superiors, moreover, that they see to the diffusion and application of the documents of the Holy See (c. 592).

11. The SALs, both of diocesan and pontifical right, are subject in a special way to the supreme authority of the Church, and each of their members is obligated to the Holy Father as the supreme superior. They are also obligated because of the bond of incorporation or, in the case of an SAL contemplated in c. 731 § 2, because of the vow of obedience (c. 590).

12. A last common point about the SALs and the ICLs concerns governance (c. 596). All their superiors and assemblies or chapters have powers over their members that are defined by the general law and the constitutions. To those powers are applied the provisions of c. 131 (ordinary power and delegated power), c. 133 (delegated power), and cc. 137–144 (general norms that affect those kinds of power) (c. 596 §§ 1 and 3).

In the clerical SALs of pontifical law the superiors possess, moreover, the ecclesiastical power of governance, in both internal and external forum (c. 596 § 2). And the major superiors are ordinaries (c. 134 § 1). The

following canons are pertinent in this regard: 5 § 1, 14, 65 § 1, 66, 68, 84, 87 § 2, 107 § 1, 162, 274 § 2, 285 § 4, 289 §§ 1–2, 764, 903, 936, 958 § 2, 1019 § 1, 1039, 1042 § 3, 1047 § 4, 1052 § 2, 1053 § 2, 1189, 1212, 1223, 1224 § 1, 1265, 1267 §§ 1–2, 1276, 1279 § 1, 1281 § 1, 1283 § 1, 1284 § 2, 6°, 1288, 1301, 1302, 1304, 1305, 1308 § 2, 1309, 1310 §§ 1–3, 1339 §§ 2–3, 1340 § 3, 1341, 1342, 1348, 1350, 1355 § 1, 1°, 1356, 1373, 1480 § 2, 1708, 1717, 1719, 1722, 1724.

13. The SALs contemplated by c. 731 § 2 will also have a reference to cc. 598–602, which concern the evangelical counsels of chastity, poverty, and obedience, as well as fraternal life. It is not well seen why c. 602 is not extended to all the SALs since it is perfectly suited to them.

14. The provisions pertaining to the SALs and its members pertain equally to both sexes (cf. c. 606), including the reference in c. 739 to the common obligations of clerics, unless the context or the nature of the subject requires otherwise

733 **§ 1. Domus erigitur et communitas localis constituitur a competenti auctoritate societatis, praevio consensu Episcopi dioecesani in scriptis dato, qui etiam consuli debet, cum agitur de eius suppressione.**

§ 2. Consensus ad erigendam domum secumfert ius habendi saltem oratorium, in quo sanctissima Eucharistia celebretur et asservetur.

§ 1. A house is established and a local community is constituted by the competent authority of the society, with the prior written consent of the diocesan bishop. The bishop must also be consulted when there is a question of its suppression.

§ 2. Consent to establish a house carries with it the right to have at least an oratory in which the Blessed Eucharist is celebrated and reserved.

SOURCES: § 1: cc. 497 § 1, 498, 674, 1501; *ES* I: 34; *AIE* 2°
§ 2: cc. 497 § 2, 1162 § 4

CROSS REFERENCES: cc. 608–616

COMMENTARY

Jean Bonfils, sma.

This canon concerns the juridical existence the house of an SAL and the constitution of a community.

The erection of a house is the responsibility of the competent superior, generally the major superior, as indicated by the constitutions. It is a question of a written formal decree that must be formulated with cc. 48–58 in mind.

One may not proceed to the erection of a house without the prior written consent of the diocesan bishop. But it is enough to consult him when it is a matter of suppression, with due regard for all the possible restrictive terms that a written agreement between the diocesan bishop and the SAL might contain.

The consent of the diocesan bishop entails the right to have an oratory where the Holy Eucharist may be celebrated and reserved. If it is reserved, a priest must celebrate mass there at least twice a month (cf. c. 934), insofar as possible.

No other norm regarding the erection and suppression of houses of religious institutes (cf. cc. 608–616) must be applied here, though when in doubt it is always possible to resort to parallel passages (cf. c. 17), and it is appropriate to adhere to the directives established in *Mutuae relationes*.

734 **Regimen societatis a constitutionibus determinatur, servatis, iuxta naturam uniuscuiusque societatis, cann. 617–633.**

The governance of the society is determined by the constitutions, without prejudice, in accordance with the nature of each society, to cann. 617-633.

SOURCES: c. 675

CROSS REFERENCES: cc. 617–633

COMMENTARY

Jean Bonfils, sma.

This canon refers everything related to the superiors, their councils, and chapters (more commonly called assemblies in the SALs) to the legislation of the religious institutes. Those references shall take into consideration the nature of each society.

Without repeating everything that was explained in the commentaries regarding the general law of the religious institutes, here we compile only what is proper to the SALs or resulting from the practice of the Roman dicasteries.

1. *Structures of governance*

When dealing with the structures, it is necessary first to keep three points in mind which are also common to the religious institutes.

a) A power exists proper to the superiors of an SAL, which in the past was called "dominative power," and which is distinguished from the ecclesiastical power of governance proper to clerics. Canon 596 § 2 bears witness to this distinction. In *Christus Dominus* 35 § 3 "the internal order of the institutes" is spoken of, and in *Mutuae relationes* 13 there is mentioned a field proper to the competence corresponding to a true autonomy that, while it never can become independence, it nevertheless must be protected by the local ordinaries (cf. c. 586 § 2) and the Holy See itself (cf. c. 539). This autonomy emerges from the charismatic character of the SAL, which is not a functional sociological group, but a gift from God to the Church with an eye toward a spiritual mission; an experience of the Spirit made by a founder and transmitted to his disciples; the Holy Spirit being a Spirit of freedom (cf. 2 Cor 3:17).

b) The authority of an SAL is collegial (chapter or assembly) and personal (superiors). Outside the chapters the superior is the one who decides, with the advice and consent of the council, according to each case. Apropos to consent, according to the official interpretation of c. 12 (see commentary) given by the competent pontifical council, the superior does not vote. There exists, nevertheless, according to some, a doubt of law regarding the application of this interpretation to the case of definitories or counsels of the majority of ICLs and SALS.

c) When it is a matter of collegial acts in general, one will always profit by making reference to c. 119 regarding collegial votes for elections or decisions, although there is always the possibility that the proper law has established other procedures, and to cc. 164–183, regarding the condition required for elections and eventual postulations as the need may arise.

2. *The general assembly*

Regarding this subject, we think the following:

a) that the general law legislates only on the general chapter, leaving to proper law the determination of what is to be referred to in the other kinds of chapters.

b) that the practice of the Holy See requires there to be more elected members of the general assembly than members by law, and that one session is sufficient unless there are exceptional circumstances which are to be submitted to the judgment of the Holy See;

c) that the number of members is not the only criterion to be taken into consideration so that a group inside the SAL can aspire to a certain level of representation; significant minorities exist that can merit a special position in the chapter;

d) that it is indispensable to state clearly when the chapter opens and when it closes so that the time may be determined during which the general superior fully exercises the corresponding power attributed to him since during the assembly the superior's competence is limited to ordinary matters of administration.

3. *Other collegial deliberative organizations*

Some SALs have another collegial deliberative organizations in certain subjects specified by the proper law. This organization is named, in the majority of cases, the plenary council, and its members by law are generally the provincial superiors as well as the possible delegates of other major superiors, for example, regional or district superiors.

4. *The superiors and their counsels*

a) The norms stated in cc. 618 and 619 must be heeded. They stress that in an SAL, as in the ICLs, the mission of the superior is eminently spiritual. Canons 124–128, must also be kept in mind regarding the required conditions to place a juridical act.

b) In none of today's SALs, as far as we know, is the superior general elected for life. The superior general names the remaining major superiors after consulting the interested parties, or else an assembly elects them with the election being confirmed by the superior.

c) For the general council the Holy See requires a minimum of three members besides the general superior. It is well known that a fourth council member must be added for the expulsion of a member from the society (cf. cc. 746 and 699 § 2). Nor is it permitted that a provincial superior be a member of a general council since it is not possible to be judge and a party at the same time—if it comes to that.

d) According to the general law of the SALs, the consent of the superior general's council is required in the cases envisioned by cc. 743–745. The consent of the competent major superior must be determined by the proper law in the cases envisioned by cc. 638 § 2, 694 §§ 1 and 2, 696, 697, and 703. Consent of the council is not prescribed for the incorporation of a member, but it seems logical to require it.

5. *Rights and duties of superiors*

The rights and duties afforded by the general law can be mentioned here.

a) For all superiors in the SALs: cc. 468 §§ 1 and 9, 618, 619, 626–630 §§ 1, 4, 5, 636 § 6, 638 §§ 2–3, 639, 703, 746 and 778.

b) For all superiors in clerical SALs: cc. 833,8°, 911 § 1, 957, and 1179.

c) For all the superiors in the clerical SALs of pontifical right (cf. cc. 732 and 596 § 2): cc. 969 § 2, 974 § 4, 1196, 1203, 1245, and 1319.

d) For all major superiors in SALs: cc. 443 § 3, 597, 625 § 3, 628 § 1, 642, 645 § 4, 694 § 2, 695 § 2, 697, 708, 733 § 1.

e) For all major superiors in clerical SALs of pontifical right (see commentary on c. 732: no. 12).

f) For the superior general of an SAL: cc. 592 §§ 1–2, 622, 625 § 1, 628 § 1, 631 § 1, 636 § 1, 698, 700, 743, 1405 § 3, 2°, 1427 § 2, 1438 § 3.

6. *Some special cases of superior generals*

There are two societies, one masculine and the other feminine, which present original cases regarding the situation of the superior general.

a) The Confederation of the Oratory of St. Philip Neri has no superior general, and the last "general congress" (general assembly) of the Confederation, held in 1988, left that condition in place, thus harkening back to the oldest tradition of the Oratory. This SAL is a confederation of congregations, that is, of autonomous communities, each one having a superior with the rank and status of major superior. The "general congress" elects a delegate of the Apostolic See whose election must be confirmed by the Holy See and whose essential and only role is to be a permanent canonical visitator.

b) The Company of the Daughters of Charity of St. Vincent de Paul, already having a superior general elected by the chapter, is under the authority of the superior general of the Congregation of the Mission, and over it, pursuant to the constitutions (3, 27), is "the double power, both dominative and jurisdictional, recognized by the Church and by the constitutions." The Daughters of Charity take vows of obedience to the superior general in everything regarding the vows of the Company and in everything within the competence of the superior. The superior general names a permanent representative to the Company, called the director general. At the provincial level an identical structure exists in which a provincial director, named by the superior general, assists the provincial visitator.

Regarding those two particular cases, the Holy See has taken into consideration the secular tradition to which they appeal. It is hardly probable, nevertheless, that the Holy See would accept those two kinds of exceptions to the general law in the case of a new foundation.

7. *The parts of an* SAL

An SAL can be divided, according to the case, into provinces, subprovinces, districts, districts in formation, regions, zones, etc. The kinds of subdivisions are numerous, and it is almost impossible to use a common language among the SALs in this regard because not only are the names diverse, but also even when they coincide, the reality that they describe is not always identical. Therefore, it is necessary that the constitutions exactly define the reality that they are talking about.

What number of houses or members is required to constitute a part within an SAL? To respond to this question we can look by analogy to cc. 115 and 610 § 2.

It is for the constitutions to indicate the competent authorities who can divide the SAL into parts: the superior general with the consent of the council, the plenary council, the general assembly, etc.

The superior of each of the divisions should be assisted by a council (cf. c. 627 § 1) whose members will be designated pursuant to the procedure established by the proper law. It goes without saying that in no case will a community or group of communities be left without a superior. Canons 617–630, to which c. 734 refers, leave no doubt about this point.

We might add that the respect for the scope of each of the different authorities of governance does not allow for a superior of a subdivision to participate as a councilor in the governance of the division upon which the subdivision depends. For example, a provincial superior will not be a general councilor at the same time. Likewise, if one region depends on a province, the regional superior will not be a provincial councilor at the same time.

735 **§ 1. Sodalium admissio, probatio, incorporatio et institutio determinantur iure proprio cuiusque societatis.**

§ 2. Ad admissionem in societatem quod attinet, serventur condiciones in cann. 642–645 statutae.

§ 3 Ius proprium determinare debet rationem probationis et institutionis fini et indoli societatis accommodatam, praesertim doctrinalem, spiritualem et apostolicam, ita ut sodales vocationem divinam agnoscentes ad missionem et vitam societatis apte praeparentur.

§ 1. The admission, probation, incorporation and formation of members are determined by each society's own law.

§ 2. For admission into the society, the conditions prescribed in cann. 642–645 are to be observed.

§ 3. The society's own law must determine a programme of doctrinal, spiritual and apostolic probation and formation that is adapted to the purpose and character of the society. In this way members can recognise their divine vocation and be suitably prepared for the mission and way of life they have chosen.

SOURCES: § 1: c. 677; SCR Decl., 30 dec. 1922 (*AAS* 15 [1923] 156–158)
§ 3: *SS* III, IV; *PC* 18; *RC* 1, 2, 5; *ES* I: 33–36; *RFIS* III; *MR* 31, 32

CROSS REFERENCES: cc. 641–661

COMMENTARY

Jean Bonfils, sma.

The present canon concerns all the SALs, masculine and feminine, in contrast to the subsequent canon, which only affects the clerical SALs.

1. *Admission*

The conditions for admission of a candidate for incorporation into an SAL are set by the general law of the ICLs and the religious institutes, pursuant to cc. 732 and 735 § 2. The proper law can add other conditions while keeping in mind the specific purposes of each SAL, as can be the

case, for example, of the specifically missionary SALs or of those that are dedicated principally to the formation of future priests.

2. *Probationary period*

We call the first stage of formation in preparation for incorporation into an SAL the probationary period. It is for the proper law to give the norms regarding this stage. At the present time, adopted modalities are varied. Sometimes simply a period of formation is prescribed; in other circumstances there is a "spiritual year" of nine months, or a probationary period of twelve months followed by a second probation of two years; finally, sometimes four years of communal living are required wherein approximately one year is devoted to a more intense spiritual formation.

In general, the goal of the probationary period is to deepen the candidate's union with the person of Jesus Christ and to experience life according to the Gospel in the heart of the SAL community. Also, it tends theoretically and practically to initiate the candidate into the life of the SAL through the study of its history, its principal apostolic orientations; and its living tradition, participating in its fraternal common life which reflects the spirit of the society. According to whether the probationary period is at the beginning or during the course of initial formation, its content is adapted to the person's cultural and spiritual level, according to the needs of the candidate. If that period lasts several years, for candidates for the presbyter ministry, this can be combined with ecclesiastical studies. In any case, two requirements must be maintained. In the first place, the probationary period will not be reduced to a period of catechumenate. For this reason a candidate will not be able to be admitted to the probationary period who lacks what is needed (desired) concerning a fundamental catechesis and the Christian life, such as that which a baptized person would normally have. These matters should be resolved during a period prior to admission to the probationary period.

Secondly, the probationary period is not only a time of study. There seems to be no indication that one must include in it an intensive program of courses or meetings. To the contrary, it is a period in which the candidate is to deepen the reasons for being, living, and committing to the direction of an experienced vocation director, in a balanced and peaceful community with a formation that is well-ordered.

3. *Incorporation or association of members*

Canons 735 and 737 speak of incorporation. An SAL might prefer the term association while another might distinguish the incorporation of a cleric, incardinated in the society, from the association of another clerical

member who is perpetually associated with the society but incardinated in a diocese.

Some SALs have one or several temporary incorporations prior to definitive incorporation. Others do not envision anything other than a definitive incorporation after a long probationary period.

a) There are various methods of incorporation. Some SALs—especially those dependent on the Congregation for the Evangelization of Peoples—have preserved the oath that they had before the conciliar *aggionamento*, though reformulated in terms inspired by the Decree *Ad gentes*. Other SALs reserve the oath for members incardinated in the society. The other members incardinated in a diocese are referred to, then, as associates in the society. According to whether that oath is perpetual or temporary its purpose can vary, not only regarding its duration, which is evident, but also regarding the obligations involved and rights conferred. If these SALs desire to maintain their spiritual dimension, as it suits the states of life in the Church that propose to favor the sanctity of their members, the formula of oath cannot be secularized in terms of enlistment or contracting, and even less so in terms of a mere employment contract. The oath is an act of religious virtue and, therefore, an act of adoration inspired by the virtues of faith, hope, and charity. And this should be manifest in the way it is referred to and in the way its obligations are fulfilled by those who have taken the oath.

b) In the SALs affected by c. 731 § 2, the bond through which the members assume the evangelical counsel does not cause incorporation into the society. If such bond consists of a vow, it is a private vow within the meaning of c. 1192 § 1 as in the case of the Daughters of Charity of St. Vincent de Paul. Thus it is out of place to speak of profession or consideration of the bond as being sacred (see commentary on c. 731). The Lazarists, who also assume the three evangelical counsels, are incorporated into the Congregation of the Mission by permission to take vows granted by the major superior, not by the taking of the vows themselves. Among the Pallottines, a candidate is incorporated by his making the promises of chastity, poverty, and obedience, and of a communal life to the society regarding goods and in a spirit of service in the charity of Christ.

To preserve in an SAL the specificity that is proper to it, and with a view towards possible constitutional reform and, *a fortiori*, the establishment of new foundations, the following is desirable:

— that the vocabulary of "consecration" not be used—unless it is believed that it should be preserved—but used sparingly and always specifying that it does not refer to the canonical state of consecrated life;

— that the private character of the bonds by which the evangelical counsels are assumed be signified in the act and expression of incorporation;

— that if it is clearly indicated that the apostolic purpose of the society is above all the motivation for incorporation be; and

— that the assumption of the evangelical counsels be disassociated from the act of incorporation as such by choosing other possible methods of incorporation.

c) For all the rest of the SALs, the expressions of incorporation vary from a mere promise to remain in the society and to obey its constitutions, to the simple inscribing of one's name in the register of persons without any liturgical or even religious rite accompanying it.

d) But up to now we have only spoken about the incorporation of members of full right. To this have to be added two references:

— Various SALs have clerical associates or lay associates, married and single, who participate individually or as a couple at least for a while in the apostolic work of the society. It seems better to settle for talking about associates or affiliates rather than about associated members since the title of member is appropriately reserved for members of full right. The juridical situation of these associates or affiliates is established by an agreement between each of them and the society. The SALs have model agreements for those purposes. Those associates can possibly share some of the rights and obligations of the members of full right, but for canonical and even theological reasons they cannot, in any case or to any extent, enjoy active and passive voice, for the commitments they make are not of the same juridical or spiritual nature—besides, active and passive voice is afforded only to persons who are intimately and stably established in the society.

— Responding to the norms of c. 298, fraternities or associations of single and married laymen also exist, which, pursuant to c. 303, are more or less closely linked to an SAL. They are governed by the norms regarding the associations of the faithful.

The more delicate point here is to determine in the statutes the degree of autonomy that these associations have with respect to the SAL. In fact, the range of these degrees is broad: it goes from a close dependence where the president of the association is the same superior general of the society, to autonomy of governance where the association has a president, assisted by a council, named by the superior general of the SAL or else elected by the association's collegial authority established by the statutes. Whatever the tenor of the specific norms that govern the relationship between the society and the association of laymen—pursuant to the statutes approved by the superior general, or if not by the Apostolic See—it is necessary to have in mind the spirit of c. 305 and to acknowledge the general superior of the society or some other major superior, according to the case, as the real interpreter of the statutes that have been approved. It is likewise his responsibility to judge the conformity of the life and activities

of the members of the association to the charism of the society and consequently to take action if the association deviates from that conformity.

e) Today the Holy See admits as members of full right only persons of the same sex—and there is no exception even for celibates. The historic examples of mixed communities have not offered proof supporting the viability of this kind of community.

4. *Formation of the members*

Each SAL must include in its proper law a plan for formation and a program of study (cf. c. 753 § 3). For each of the stages of formation, while keeping their own character in mind, the SALs will benefit from being guided by the Instruction. *Potissimum institutioni*, which contains directives for formation in the religious institutes:[1]

— for the beginning of the preparatory period *Potissimum institutioni* 42–44;

— for the probationary period itself cc. 646–653 and *Potissimum institutioni* 45–53;

— for the temporary incorporation period, if any, and for the stage preceding single and definitive incorporation, if there is no temporary incorporation cc. 659, 660, and *Potissimum institutioni* 58–65;

— for the continuing formation of those definitively incorporated c. 661 and *Potissimum institutioni* 66–71.

The SALsS whose members are destined to be sent on mission to a culture foreign to their own will include in the plan for formation ch. IV of *Ad gentes*, and they will conform to the practical guidance that it offers. They will add to that the study of Apostolic Exhortation *Evangelii nuntiandi*, Encyclical *Redemptoris Missio*, and the most important documents of the Pontifical Councils for the Unity of Christians, for Justice and Peace, for Dialogue among Religions, for Dialogue with Non-believers, and for Culture. To conclude this explanation of the part of c. 735 that concerns formation, it is important to add that even when formation is developed in the setting of the inter-institutional center for formation, each major superior retains the inalienable responsibility for the formation of the members of his or her society. That formation, and more precisely, that inter-institutional teaching, must always be imparted with reference to the values proper to the founding charism of that society.

1. *AAS* (1990), pp. 470–532.

736 **§ 1. In societatibus clericalibus clerici ipsi societati incardinantur, nisi aliter ferant constitutiones.**

§ 2. In iis quae ad rationem studiorum et ad ordines suscipiendos pertinent, serventur normae clericorum saecularium, firma tamen § 1.

§ 1. In clerical societies, the clerics are incardinated into the society unless the constitutions determine otherwise.

§ 2. The norms concerning the secular clergy apply to the programme of studies and reception of Orders, without prejudice to § 1.

SOURCES: § 1: cc. 115, 585; SCPF Ind., 12 iun. 1923; SCPF Resp., 30 maii 1932; SCCouncil Resol., 15 iul. 1933 (*AAS* 26 [1934] 234–236); CodCom Resp., 24 iul. 1946
§ 2: cc. 587–591, 678; *SS* IV; *SCong* 40–46, 50; *OT*; *ES* II: 34, 35; *RFIS* 2

CROSS REFERENCES: cc. 242–258, 1024–1054

COMMENTARY

Jean Bonfils, sma.

This canon contemplates only the clerical SALs and considers two aspects that affect them.

1. *Incardination*

Normally clerical members are incardinated in the society. Only major superiors of the SALs of pontifical right, however, can issue dimissorials for the reception of the diaconate or presbyterate (cf. c. 1019 § 1). The relations between a cleric in an SAL who is incardinated in a diocese and the diocesan bishop are defined both in the constitutions of the SAL and in particular agreements (cf. c. 738 § 3). The law does not recognize the notion of double incardination and it is improper to use the term. In reality, a cleric is incorporated (or associated, according to the vocabulary employed in this case) into the SAL and eventually incardinated at the same time in the diocese.

2. *Formation*

Besides the program of formation spoken of in c. 735 (see commentary), and in harmony with that canon, while keeping in mind the rightful autonomy of each SAL (cf. c. 586), the program of studies for diocesan priests, as well as the norms relative to their ordination, also pertain to the clerics of the SALs without forgetting § 1 of the present canon. The program of studies rests on the *rationale fundamentalis institutionis sacerdotalis* and cc. 242–258, as well as on the norms established by the Conferences of Bishops of the countries to which members of the SAL are sent.

Nor should be omitted consideration of the requirements of the ordained themselves and of ordination, before, during, and after its celebration (cf. cc. 1024–1054).

737 **Incorporatio secumfert ex parte sodalium obligationes et iura in constitutionibus definita, ex parte autem societatis, curam sodales ad finem propriae vocationis perducendi, iuxta constitutiones.**

For the members, incorporation carries with it the rights and obligations defined in the constitutions. On the part of the society, it implies a responsibility to lead the members towards the purpose of their vocation in accordance with the constitutions.

SOURCES: —

CROSS REFERENCES: cc. 662–672, 739

COMMENTARY

Jean Bonfils, sma.

This cannons deal with the rights and duties derived from definitive incorporation. Those derived from temporary incorporation can be identical or else more restricted, pursuant to the proper law.

1. *On the part of the person incorporated*

The incorporated person is committed to remain forever or for a certain time in the society, according to the case. Its constitutions and laws must be observed and the life-style they suggest must be followed. Its superiors must be obeyed and the tasks assigned must be carried out.

If he assumes the evangelical counsels, he is obliged to practice them as stated in the constitutions. Even if the three evangelical counsels are not expressly assumed, all the members of the SALs are obliged to observe celibacy and, consequently, to observe perfect chastity pursuant to c. 735 § 2, which refers to 643 § 1,2° (regarding conditions of validity for admission to the novitiate), and pursuant to c. 739, which refers to c. 277 (regarding the obligation for clerics "to observe perfect and perpetual continence for the sake of the kingdom of heaven"). The Code presents this as an obligation, but one must not forget that it is above all a gift of grace. Therefore, it must be confirmed in the period of formation, on the one hand, that the candidate has really received this gift of grace and, on the other hand, that he or she fulfills all the required conditions to embrace and nurture it.

Regarding the SALs contemplated in c. 731 § 2, its members do not fall under the prescription of c. 1088, which refers to the diriment impediment of marriage since the vow (if there is one) is not a public and perpetual vow of chastity taken in a religious institute.

A reference here to the situation of bishops who are members of an SAL cannot be omitted. Pursuant to c. 17, it seems that the canonical dispositions relative to religious bishops can be applied to member bishops (cf. cc 705–707). Nevertheless, since this is not a matter of religious bishops in the strict sense of the phrase, it does not seem possible to conclude that they would be deprived of active and passive voice in their society, contrary to the response of the CPI of May 17, 1986, given in reference to religious bishops.[1]

2. *On the part of the society of apostolic life*

The society is committed, in the person of its superiors and members, to promote and maintain the fidelity of each member. To that end, the society shall furnish to all its members the means indicated by the constitutions to reach the apostolic aim of the society. Prominent among these means are fraternal communal living and all the ascetic, spiritual, and material means that tends toward perfection in charity. This shall be accomplished according to the greater or lesser extent that financial autonomy is left to each member as stated in the constitutions. In effect, and without prejudice to the requirements of evangelical poverty and to a certain share of communal goods, the proper law adopts the necessary regulations so that, even in a system of relative economic autonomy, each member has sufficient means to pay for purely personal needs.

1. *AAS* 78 (1986), p. 1323.

738 **§ 1. Sodales omnes subsunt propriis Moderatoribus ad normam constitutionum in iis quae vitam internam et disciplinam societatis respiciunt.**

§ 2. Subsunt quoque Episcopo dioecesano in iis quae cultum publicum, curam animarum aliaque apostolatus opera respiciunt, attentis cann. 679–683.

§ 3. Relationes sodalis dioecesi incardinati cum Episcopo proprio constitutionibus vel particularibus conventionibus definiuntur.

§ 1. All members are subject to their own Moderators in matters concerning the internal life and discipline of the society, in accordance with the constitutions.

§ 2. They are also subject to the diocesan bishop in matters concerning public worship, the care of souls and other works of the apostolate, with due regard to cann. 679–683.

§ 3. The relationship between a member who is incardinated in a diocese and his proper bishop is to be defined in the constitutions or in particular agreements.

SOURCES: § 1: *CD* 35: 2; *PC* 14; *MR* 28, 33–35, 46, 52
§ 2: cc. 344, 500 §§ 1 et 2, 512 § 2,2°, 608 § 1, 618 § 2, 619; *MG*: 570–571; *LG* 45; *CD* 34, 35: 1, 3, 4; *PC* 6; *ES* I: 23 § 1, 24, 25 § 1, 26, 29, 35–36

CROSS REFERENCES: cc. 443, 463 § 1, 9°, 498, 512, 520, 523, 538, 547, 552, 556, 673–683, 776, 778, 1742

COMMENTARY

Jean Bonfils, sma.

This canon deals with the relations of a member of an SAL with superiors and with the diocesan bishop.

1. *With their superiors*

The extent of the superiors' authority regarding the members of the society and the scope of their obedience to the superiors with respect to discipline and internal life are described in the constitutions and the other

norms of the society. Both authority and obedience must be viewed in the context of the "just autonomy" (c. 586) of the SAL, which belongs to the local ordinaries to safeguard and protect. Thus in principle, a member should have no conflict between the obedience owed to his superior and that which corresponds to the diocesan bishop.

2. *With the diocesan bishop*

a) Before any other consideration in this regard, it is necessary to go back to cc. 102 and 103 for what is referred to as the domicile and quasi-domicile of the members of the SAL. It is a prerequisite to determine who the diocesan bishop is.

b) Regarding relations with the diocesan bishop, recourse must be had to cc. 679–683. Here, we will call attention to only two points. First is the necessity of a written agreement between the diocesan bishop and the competent superior of the society every time this bishop assigns a task to the society or when some of the members of the society are placed at the disposal of the bishop. Second is the opportunity to specify, whether in a specific agreement or generally in the constitutions, the kind of relation that has to be maintained between a member of an SAL who is incardinated in a diocese and the bishop of that diocese. Unless that incardination is to be purely fictitious or ideological, it should be expected at least to entail a minimum economic cost for the diocese in which the member of the SAL is incardinated.

c) If this agreement establishing relations with the diocesan bishop is extended to one or several particular churches, it is necessary to add the following:

— canons 520, 523, 538, 547, 552, 556, 776, 778 and 1742 apply to members of an SAL who are named parish priests;

— the major superiors of the SALs that have their headquarters in the territory of a diocese must be called by consultative vote to the particular council, their number to be fixed by the Conference of Bishops or by the bishops of the province (c. 443);

— any SAL superiors who have a house in the diocese must be called as members of the diocesan synod and they are obliged to participate in it. Their number and the method of designating it are fixed by the diocesan bishop (c. 463 § 1,9°); the member priests of an SAL who reside in and perform their mission for the good of the diocese have active and passive vote in the presbyteral council (c. 498). The same could be said of the pastoral council pursuant to c. 512, though the SALs are not expressly mentioned there.

739 **Sodales, praeter obligationes quibus, uti sodales, obnoxii sunt secundum constitutiones, communibus obligationibus clericorum adstringuntur, nisi ex natura rei vel ex contextu sermonis aliud constet.**

Apart from the obligations which derive from their constitutions, members are bound by the common obligations of clerics, unless the nature of things or the context establishes otherwise.

SOURCES: c. 679 § 1

CROSS REFERENCES: cc. 273–289

COMMENTARY

Jean Bonfils, sma.

1. Here, the Code refers to the obligations of clerics (cc. 273–289) and to the obligations imposed upon the members of the SALs by the constitutions. This reference affects all the members of full right, including lay members, men (brothers) and women. It is appropriate, however, to ask oneself how well-founded this reference is since more than half of the SALs are clerical.

The fact is that an SAL has a public character in the Church and the world. The SAL has its own place in the world through its houses, communities, and the life-style of its members. When it is said of a priest member of an SAL that he belongs to the secular clergy, this attribute cannot mean the total immersion in the structures of the world, for to sanctify the world *ab intus* is the purpose of the secular institutes (c. 710) and not of the SALs. No doubt a missionary presence in a place or environment that becomes particularly secularized or impenetrable—if not hostile—upon the announcement of the Gospel, will justify a certain discretion regarding the visibility of that presence. And more than half of the masculine SALs are exclusively missionary. This matter, however, will correspond more to the conditions under which the mission is carried out than to the nature of the SALs, which are unquestionably visible by nature.

The reference to the obligations of the clerics is also explained by the essentially apostolic purpose of an SAL. Its members are sent forth for the proclamation and establishment of the Kingdom and of the Church which is its "seed and beginning" (*LG* 5). That Kingdom is not of this world, though it might be constructed with this world. It comes from most

high and most far away. Therefore, it is appropriate that the member of an SAL manifest behaviorally that "the form of this world is passing away" (1 Cor 7:29–31). This is better understood when the mission and life-style of the members of the SAL are different from those of laymen.

Most of those obligations, it must be said, are already in the proper law of each society in one way or another. Some, evidently, only concern diocesan priests (for example, the norms of cc. 278 §§ 1–2, 280–281, 282 § 2, 283) and should not remain here. It is important not to forget the final clause of the canon: "unless the nature of things or the context establishes otherwise."

2. We will list here the obligations that concern SAL members:

a) respect and obedience to the Pope and to their own ordinary (c. 273);

b) acceptance and faithful performance of the functions entrusted to them by the ordinary (c. 274 § 2);

c) unity among the members of the SAL in community, prayer, and cooperation according to the norms of the society (c. 275 § 1);

d) acknowledging and supporting the function of the lay faithful (c. 275 § 2);

e) striving for sanctity through the faithful and tireless fulfillment of the apostolic ministry; through a spiritual life nourished by the Scriptures and the Most Holy Eucharist; through the Liturgy of the Hours celebrated according to the general law and constitutions (cf. c. 1174 § 1); through spiritual retreats as provided for in the constitutions; through mental prayer, frequent reception of the sacrament of Reconciliation, particular worship of the Virgin Mary, and through the other means of sanctification that form a part of the spiritual heritage of the Church (c. 276);

f) observance of celibacy in perpetual and perfect continence for the sake of the Kingdom of Heaven and all the necessary means for maintaining that commitment such as due care in relationships, etc. (c. 277);

g) abstention from founding associations whose aim or work is incompatible with the nature or aim of an SAL (c. 278 § 3);

h) continuing sacred studies conforming to a solid doctrine as well as studying other sciences having a pastoral bearing (c. 279);

i) observance of community of life according to the constitutions (c. 280 and especially c. 740);

j) cultivation of a simple style of life far from all that might have an air of vanity (c. 282 § 1);

k) wearing a habit in conformity with the norms of the SAL (c. 284);

l) observance of the prohibition of activities incompatible with the nature and aim of an SAL: the participation in the exercise of civil power, management of goods belonging to laity, taking secular employment entailing the obligation of rendering accounts, doing business for oneself or through intermediaries, or taking an active part in political parties or in the management of labor unions, etc. (cc. 285–287);

m) not volunteering for military service (c. 289 § 1).

740 Sodales habitare debent in domo vel in communitate legitime constituta et servare vitam communem, ad normam iuris proprii, quo quidem etiam absentiae a domo vel communitate reguntur.

Members must live in a lawfully constituted house or community and observe a common life, in accordance with their own law. This same law also governs their absence from the house or community.

SOURCES: c. 673 § 1; CodCom Resp. VI, 2–3 iun. 1918 (*AAS* 10 [1918] 347); *CAd* 15; *PC* 15; *ES* II: 25–29

CROSS REFERENCES: c. 665

COMMENTARY

Jean Bonfils, sma.

This canon requires SAL members to live in a lawfully constituted house or community and to observe a common life. Left to the proper law are the conditions which that life must entail and under which absences may be permitted.

We emphasize above all the distinction that the canon makes between a lawfully constituted house and community, as stated in c. 733 § 1. Such a distinction is explained by the fact that a lawfully erected community of an SAL can live in a different place from the place where a house is erected, for example, in a diocesan seminary or in a parish of a diocese. Furthermore, a member of an SAL, who must necessarily belong to a community, may not live habitually in a place that is apart from the remaining members of the community.

Here we will summarize the essential legislation relevant to a fraternal common life:

1. Fraternal common life is a constitutive element of the SALs (cf. c. 731), which cannot be considered a juridical entity unless it has at least three persons (c. 115 § 2).

2. A house is erected and a community established by the authority of the SAL (cf. c. 733 § 1).

3. The members must live in a lawfully constituted house or community and lead a common life in accordance with the proper law (c. 740).

4. The proper law, for apostolic reasons, which are the most important ones to keep in mind, envisions different kinds of situations in practice:

a) life under the same roof in a homogeneous community in a house of the society;

b) one member or several members living in a mission or parish of a diocese, in a non-homogeneous community, that is, with secular clerical members or with members from other institutes or societies. In this case, the member or members of the same society depend on a superior who visits them regularly. Even for single members, they still belong to a community even though not living there habitually. This situation, which can be justified by reasons of apostolate, is considered exceptional by the SALs that allow it. Generally, the proper law declares that common life is each member's right;

c) absence from the community because of the member's ill health or that of a parent, or else for reasons of family responsibilities, studies, or of formation in general. In those cases it is for the competent superior to establish appropriate means for the interested party to preserve ties to the society. In any case, the member maintains all the obligations that flow from the bond of incorporation except that of living in a house of the society.

Lastly, it is important to note that this canon does not refer to a member who is living outside the society because of an indult, a situation contemplated by c. 745.

741 **§ 1. Societates et, nisi aliter ferant constitutiones, earum partes et domus, personae sunt iuridicae et, qua tales, capaces bona temporalia acquirendi, possidendi, administrandi et alienandi, ad normam praescriptorum Libri V De bonis Ecclesiae temporalibus, cann. 636, 638 et 639, necnon iuris proprii.**

§ 2. Sodales capaces quoque sunt, ad normam iuris proprii, bona temporalia acquirendi, possidendi, administrandi de iisque disponendi, sed quidquid ipsis intuitu societatis obveniat, societati acquiritur.

§ 1. Societies and, unless the constitutions provide otherwise, their constituent parts and their houses are juridical persons. As such, they are capable of acquiring, possessing, administering and alienating temporal goods in accordance with the provisions of book V on 'The temporal Goods of the Church', of cann. 636, 638 and 639, and of their own law.

§ 2. Members are also capable, in accordance with their own law, of acquiring, possessing, administering and disposing of temporal goods, but whatever comes to them in consideration of the society is acquired for the society.

SOURCES: § 1: c. 676 §§ 1 et 2
§ 2: cc. 580 §§ 1 et 2, 594 § 2, 676 § 3; *PC* 13

CROSS REFERENCES: § 1: cc. 634–640, 1254–1310
§ 2: c. 668

COMMENTARY

Jean Bonfils, sma.

1. Regarding § 1 of this canon, see commentaries on cc. 636, 638, 639 and 1254–1310. Nevertheless, in the case of missionary societies, one must distinguish carefully the society's own goods from those of the mission (*sui iruis*, apostolic prefecture or vicariate) which the former had, at some point, entrusted to the latter within the juridical context of *ius commissionis.*

By way of example, a missionary SAL defines its own goods as follows:

a) moveable and immovable property acquired and possessed by one of the juridical persons of the society;

b) moveable and immovable property acquired by one of the members of the society because of a job or project undertaken by the society;

c) the wages, pensions, or other compensation resulting from the jobs to which the society has assigned its members or associates, or from jobs which the members or associates have contracted with or without the agreement of the society; it being understood, however, that this is without prejudice to the rights of all members to possess or manage their own patrimony and everything received *intuitu personae*;

d) the offerings for Mass, i.e., the funds which proceed from offerings already turned in.

Nevertheless, the provincial assemblies and the generalate have the right, regarding personnel that depend on them, to leave the free disposition of those funds or a part of them to the members to whom they pertain.

2. Regarding § 2 of this canon, that is, when dealing with a person's goods, reference must be made to c. 282, which recommends to clerics, and therefore to the members of the SALs (clerics or not), the search for a simplicity of life, far from all that might have an air of vanity. The norms of proper law about the economic capacity of the members vary from one society to another. They range from a quasi-assimilation of the practice of the religious institutes to the broadest autonomy for each member, not only regarding personal property but also for the goods that could be considered as lawfully belonging to the society, as, for example, the offerings made at Mass.

It seems useful for the proper law to carefully delimit the meaning that has to be given to the expression . By analogy, we state here the interpretation that a general superior of an exclusively missionary SAL gave at the beginning of the twentieth century: "They [those words] mean that all that we received and indeed that which we would not have received were we not missionaries, must be handed in to the common estate even when the donor preferred it to be a personal gift … Only parents and childhood friends (the friends they had before being missionaries) can be supposed not to give 'on the occasion of the missions'. In effect …, any other person who makes a gift to a missionary, even a gift meant to be personal, does it because he is more or less influenced by the esteem felt for the missionaries, even though the principal and determining cause of the act of generos-

ity might be an interest that he can personally have toward one of them to whom he has had occasion to meet."[1]

We have here the strictest interpretation of the expression *intuitu missionis*, which we have applied by analogy to the expression *intuitu societatis*. This interpretation can be accepted if the society, for its part, entirely provides for the essential material necessities of its members: subsistence, opportunities for work, leisure, and cultural expenses in general. And, in any case, each one must decide these questions while keeping in mind the requirements of apostolic poverty.

1. MONS. PAUL PELLET, in *L'École Apostolique*, 2nd ed. (Lyon 1923), p. 459.

742 **Egressus et dimissio sodalis nondum definitive incorporati reguntur constitutionibus cuiusque societatis.**

The departure and dismissal of a member who is not definitively incorporated are governed by the constitutions of each society.

SOURCES: *CAd* 14

CROSS REFERENCES: cc. 688–690, 694–704

COMMENTARY

Jean Bonfils, sma.

The process of departure and dismissal of a temporarily incorporated member depends on the proper law of each SAL.

For departure, the proper law can provide that the superior general, with the consent of the consent of the council, may grant an indult of departure from the society. Inspiration may be drawn from c. 688 § 2 or else another procedure can be devised. For dismissal, reference can be made to c. 696 § 2.

If there is to be dispensation from private vows taken in the society (cf. c. 731 § 2), c. 1196 should be kept in mind unless the proper law provides otherwise.

743 **Indultum discedendi a societate, cessantibus iuribus et obligationibus ex incorporatione promanantibus, firmo praescripto can. 693, sodalis definitive incorporatus a supremo Moderatore cum consensu eius consilii obtinere potest, nisi id iuxta constitutiones Sanctae Sedi reservetur.**

A member who is definitively incorporated can obtain an indult to leave the society from the supreme Moderator with the consent of his or her council, unless the constitutions reserve this to the Holy See. This means that the rights and obligations deriving from definitive incorporation cease, without prejudice to can. 693.

SOURCES: cc. 638, 640 § 1, 641; SCCouncil Resol., 15 iul. 1933 (*AAS* 26 [1934] 234–236); CodCom Resp. 2, 27 iul. 1942 (*AAS* 34 [1942] 241)

CROSS REFERENCES: c. 693

COMMENTARY

Jean Bonfils, sma.

This canon only affects definitively incorporated members. For the rest of its content, see commentary on c. 693.

744 **§ 1. Supremo quoque Moderatori cum consensu sui consilii pariter reservatur licentiam concedere sodali definitive incorporato ad aliam societatem vitae apostolicae transeundi, suspensis interim iuribus et obligationibus propriae societatis, firmo tamen iure redeundi ante definitivam incorporationem in novam societatem.**

§ 2. Ut transitus fiat ad institutum vitae consecratae vel ex eo ad societatem vitae apostolicae, licentia requiritur Sanctae Sedis, cuius mandatis standum est.

§ 1. Permission for a member who is definitively incorporated to transfer to another society of apostolic life is likewise reserved to the supreme Moderator with the consent of his or her council. The rights and obligations of the member's own society are suspended for the time being, but the member has the right to return to it before definitive incorporation into the new society.

§ 2. To transfer to an institute of consecrated life or from such an institute to a society of apostolic life, the permission of the Holy See is required, and its instructions are to be followed.

SOURCES: c. 681

CROSS REFERENCES: cc. 684 § 5, 730

COMMENTARY

Jean Bonfils, sma.

This canon is sufficiently clear by itself and requires no other commentary than to show a certain surprise at the last clause, since it is obvious that following the mandates of the Holy See is necessary.

745 **Supremus Moderator cum consensu sui consilii sodali definitive incorporato concedere potest indultum vivendi extra societatem, non tamen ultra triennium, suspensis iuribus et obligationibus quae cum ipsius nova condicione componi non possunt; permanet tamen sub cura Moderatorum. Si agitur de clerico, requiritur praeterea consensus Ordinarii loci in quo commorari debet, sub cuius cura et dependentia etiam manet.**

The supreme Moderator, with the consent of his or her council, can grant a definitively incorporated member an indult to live outside the society for a period not exceeding three years. Rights and obligations which are not compatible with the new condition are suspended, but the member remains under the care of the Moderators. Moreover, if the member is a cleric, the consent of the local Ordinary where he must reside is required, and the member remains also under the care of the Ordinary and dependent upon him.

SOURCES: *CAd* 15

CROSS REFERENCES: c. 688

COMMENTARY

Jean Bonfils, sma.

Although it does not employ the term, the canon deals with exclaustration which, pursuant to c. 688 § 2, cannot be justified other than by grave cause. We find ourselves, therefore, before a case very distinct from that of permission for absence from the house (c. 740). It must be added that in some cases recourse to the juridical category of "qualified exclaustration," used in the practice of the Curia pertaining to religious (see commentary on cc. 686–687: no. 5), does not appear to us to be useful when dealing with the SALs.

746 **Ad dimissionem sodalis definitive incorporati serventur, congrua congruis referendo, cann. 694–704.**

For the dismissal of a member who is definitively incorporated, the provisions of cann. 694–704 are to be observed, making the appropriate adjustments.

SOURCES: c. 681; CodCom Resp. II, 1 mar. 1921 (*AAS* 13 [1921] 177)

CROSS REFERENCES: cc. 694–704

COMMENTARY

Jean Bonfils, sma.

For the commentary on this precept see cc. 694–704 and their commentaries.

To conclude the commentaries on this second section, we will add here three points whose emphasis we think useful regarding the significance of this state of life that the Church recognizes under the title of "Societies of Apostolic Life."

1. A determined affirmation of the specific identity of this state can help prevent an abuse of the vocabulary of consecration in spiritual theology. Besides the sacramental consecrations that are fundamental, Vatican Council II and the *CIC* only recognize "life consecrated by the profession of evangelical counsels," and not "consecrated life" in an absolute and indeterminate sense. On the other hand, as "particular" as consecration by profession of the counsels might be, its roots are deeply buried in baptismal consecration, without which it would have no support or meaning at all.

2. The existence of the SALs as a state of life distinct from the ICLs emphasizes, in the second place, the universal vocation of all Christians to sanctity, whatever their state of life or condition (cf. *LG* 40). All Christ's faithful have at their disposal all the necessary and sufficient means to travel this road, especially the "multiple counsels" (*LG* 40) that the Lord in the Gospel made plain for his disciples to see. These means are all gifts from God. There does not exist among them one higher than charity, which surpasses all others, because it is the only one that remains beyond this passing world. No state of life possesses a monopoly on the easiest and surest way to sanctity: if the contrary were true, we would have to make our apologies to the Christian homes (!), "collaborators in the love

God the Creator and as his interpreters" (*GS* 50 § 2) and we would also have to do away with all of chapter V of the Const. *Lumen gentium*.

3. The specific nature of the SALs highlights, in the end, that the apostolate, when well understood,[1] can be in itself a road to sanctity, which does not need any accompaniment or any means of support to be practiced in favorable conditions. It has everything necessary to lead those who follow it to the perfection of charity, on the condition that it is considered neither as a practice nor as a philanthropic enterprise, but as a mission received from the Lord Jesus: the mission that he himself received from the Father.

The conclusion can be no other than this: an assimilation of the SALs (including those contemplated in c. 731 § 2) into the ICLs would not only be contrary to the law, as we think we have sufficiently proven in the commentary on the canons, but it would also appear superfluous and useless no matter what point of view one might take.

1. E.g., as it is described and given a theological foundation by an author like P. F.X. DURRWELL, *Le mystère pascal source de l'apostolat* (Paris 1970).